House Calendar No. 101.

63D CONGRESS, *2d Session.* | HOUSE OF REPRESENTATIVES. | REPORT No. 570.

CHARGES AGAINST HOUSE MEMBERS AND LOBBY ACTIVITIES.

APRIL 24, 1914.—Referred to the House Calendar and ordered to be printed.

Mr. FLOYD of Arkansas, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany report of committee appointed under H. Res. 198.]

The Committee on the Judiciary, having had under consideration the following House resolution:

[63d Cong., 2d sess. H. Res. 342. In the House of Representatives. Dec. 9, 1913.]

Mr. Garrett submitted the following resolution; which was passed by the House, page 536, Congressional Record:

RESOLUTION.

Resolved, That the report of the select committee appointed under House resolution No. 198, and the findings and testimony, be referred to the Committee on the Judiciary, with directions to report to the House at the earliest practicable date what action, if any, should be taken by the House thereon.

beg leave to submit thereon the following report:

(1) That it is within the power of the House to punish its Members for disorderly behavior and by a two-thirds vote expel a Member.—(*See art. 1, sec. 5, Const. U. S.*)

The two methods of punishment of a Member under the practices of the House are by expulsion and by censure.—*Hinds' Precedents, vol. 2, sec. 1255, and cases there cited.*

In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective membership of the respective Houses of Congress, restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.

In support of this view and in order to get a clear conception of the construction placed upon this provision of the Constitution by those who helped to frame it and who construed its provisions in

the light of contemporaneous history, we call attention to the case of John Smith, of Ohio, which arose in the Senate in 1807. The principles of law and procedure adopted in that case have been generally accepted as sound and have been followed substantially in all subsequent cases. Senator John Smith, of Ohio, was indicted in the Federal court at Richmond, Va., for alleged complicity in the conspiracy of Aaron Burr. After the acquittal of Burr the indictments against Smith, who was at the time a United States Senator from the State of Ohio, were dismissed. His conduct in connection with this alleged conspiracy was brought to the attention of the Senate and a special committee was appointed to investigate the same. After a full investigation of the facts and the law applicable to the case, the special committee reported a resolution for the expulsion of Senator Smith. A vote was taken on this resolution, which resulted as follows: Yeas 19, nays 10. Two-thirds not having voted in the affirmative, the resolution was lost. Senator Smith thereupon immediately resigned from the Senate and no further action was taken in the case.—(*Smith's Digest of Decisions and Precedents. Mis. Doc., vol. 12, 1893–94, p. 19.*)

Mr. Adams submitted the report for the special committee, in which report he laid down with clearness and force the principles of law and procedure, which in his judgment and in the judgment of his committee, should guide Congress and either House thereof in dealing with a Member under charges of improper conduct. The Senate sustained and followed the recommendations of the committee as to its power to deal with a Member for improper conduct in a summary manner—unhampered by ordinary and technical rules of procedure in courts of law.

While perfectly aware that there are and have always been two schools of thought on this question, your committee considers the principles enunciated and the views expressed by Mr. Adams in his admirable report as sound to-day, sustained by reason and common sense and by unbroken precedent for a hundred years. We submit and quote with approval the following extracts from Mr. Adams's report:

> In examining the question whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its Members, let us assume as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution or precedents domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a Member must in its nature be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.
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> The power of expelling a Member for misconduct results, on principles of common sense, from the interest of the Nation, that the high trust of legislation should be invested in pure hands. When the trust is elective, it is not to be presumed that the constituent body will deposit it in the keeping of worthless characters. But when a man whom his fellow citizens have honored with their confidence on the pledge of a spotless reputation has degraded himself by the commission of infamous crimes, which becomes suddenly and unexpectedly revealed to the world, defective indeed would be that institution which would be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison has reached the heart.

Again quoting from Mr. Adams's report, we submit the following:

> By the letter of the Constitution, the power of expelling a Member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.

We have quoted the above extracts from Mr. Adams's report because the views therein expressed were advanced and promulgated by men who were instrumental in establishing our independence, in forming the Union, and in framing the Constitution of the United States. While persons accused of offenses and counsel representing them have always taken the opposite view and uniformly contended for the principles governing trials in judicial proceedings and for the observance of technical rules of law in the trial of such cases, yet we have failed to find in the numerous precedents that have arisen under this particular provision of the Constitution where either House of Congress has ever disclaimed its power to deal summarily with a Member for flagrant misconduct or has, in the exercise of its authority, deviated from the fundamental principles laid down by Mr. Adams in his report on the Smith case.

The question has been raised and discussed as to whether or not the House has the power to expel or punish a Member for misconduct in a preceding or former Congress of which he was also a Member.—(*See Hinds' Precedents, vol. 2, sec. 1286.*)

In a case in which the conduct of Oakes Ames, a Representative from Massachusetts, and James Brooks, a Representative from the State of New York, was under investigation by a special committee, the report of the special committee having been referred to the Committee on the Judiciary, Mr. Benjamin F. Butler, of Massachusetts, made a report from the Judiciary Committee of the House, in which it was stated:

> Your committee is constrained to believe that the power of expelling a Member for some alleged crime committed, it may be, years before his election, is not within the constitutional prerogative of the House.

The special committee having the matter under investigation reached an opposite conclusion and offered a resolution for the expulsion of Oakes Ames and James Brooks, Representatives as aforesaid.

The statement of the facts in the report of the special committee shows that the transactions complained of occurred in a former Congress, four or five years before they were brought to the attention of the House by the report of the investigating committee.

The following is an extract taken from the report of the investigating committee:

> In considering what action we ought to recommend to the House upon these facts, the committee encounters a question which has been much debated, Has this House the power and jurisdiction to inquire concerning offenses committed by its Members prior to their election and to punish them by censure or expulsion? The committee are unanimous upon the right of jurisdiction of this House over the cases of Mr. Ames and Mr. Brooks upon the facts found in regard to them. Upon the question of jurisdiction, the committee present the following views:
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> The Constitution, in the fifth section of the first article, defines the power of either House as follows: "Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds expel a Member."
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> It will be observed that there is no qualification of the power, but there is an important qualification of the manner of its exercise—it must be done "with the concurrence of two-thirds."
>
> The close analogy between this power and the power of impeachment is deserving of consideration.
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> The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not the principal object. Members of Congress are not subject to be impeached, but may be expelled, and the principal purpose of

expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body and whose presence in it tends to bring the body into contempt and disgrace.

In both cases it is a power of purgation and purification to be exercised for the public safety, and in the case of expulsion for the protection and character of the House. The Constitution defines the causes of impeachment, to wit: "Treason, bribery, or other high crimes and misdemeanors." The office of the power of expulsion is so much the same as that of the power to impeach that we think it may be safely assumed that whatever would be a good cause of impeachment would also be a good cause of expulsion.

It has never been contended that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such offense before his appointment should not upon detection and exposure be convicted and removed from office. Every consideration of justice and sound policy would seem to require that the public interest be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution has attached.

If this is so in regard to other civil officers, under institutions which rest upon the intelligence and virtue of the people, can it well be claimed that the law-making Representative may be vile and criminal with impunity, provided the evidences of his corruption are found to antedate his election? (*See Hinds' Precedents, vol. 2, sec. 1286.*)

When the cases of Ames and Brooks were brought up in the House and a resolution of expulsion was offered, the following resolution was offered as a substitute, to wit:

Whereas by the report of the special committee herein it appears that the acts charged as offenses against Members of this House in connection with the Credit Mobilier occurred more than five years ago and long before the election of such persons to this Congress, two elections by the people having intervened; and

Whereas grave doubts exist as to the rightful exercise by this House of its power to expel a Member for offenses committed by such Member long before his election thereto and not connected with such election: Therefore

Resolved, That the special committee be discharged from the further consideration of this subject.

Resolved, That the House absolutely condemns the conduct of Oakes Ames, a Member of this House from Massachusetts, in seeking to procure congressional attention to the affairs of a corporation in which he was interested, and whose interest directly depends upon the legislation of Congress, by inducing Members of Congress to invest in the stocks of said corporation.

Resolved, That this House absolutely condemns the conduct of James Brooks, a Member of this House from New York, for the use of his position of Government director of the Union Pacific Railroad and of Member of this House to procure the assignment to himself or family of stock in the Credit Mobilier of America, a corporation having a contract with the Union Pacific Railroad, and whose interests depended directly upon the legislation of Congress.

The substitute was adopted; yeas 115, nays 110.

Thereupon voting began on the original resolution, as amended by the substitute, the first vote being taken on the resolution condemning Oakes Ames. This was adopted; yeas 182, nays 30.

The resolution condemning James Brooks was agreed to; yeas 174, nays 32.

The preamble was disagreed to. (*See Hinds' Precedents, vol. 2, sec. 1286, p. 853.*)

In this case the Judiciary Committee concluded and reported that the House was without power to punish a Member for offenses committed before his election. The House ignored the recommendations of the Judiciary Committee and punished two of its Members by censure and declined to express doubt as to its power and jurisdiction by refusing to adopt the preamble. In the judgment of your com-

mittee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them.

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution and after due circumspection, and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.

POWER OF THE HOUSE OVER CONTEMPTS.

(2) That it is within the power of the House to punish for contempts persons other than Members for offenses against its Members, officers, or employees, or for interfering with its proceedings, or for offenses affecting the dignity, orderly procedure, or integrity of the House. (*House Manual and Digest; 62d Cong., 3d sess., p. 98, Hinds' Precedents, secs. 287 to 292, inclusive; Anderson* v. *Dunn, 6 Wheaton, 204; Kilbourn* v. *Thompson, 103 U. S., 168; In re Chapman, 166 U. S. Report, 661.*)

The principle is well settled by the cases cited that each House of Congress has power to punish for contempt of its authority persons other than Members. The power to punish its Members, it must be observed, is derived from express provisions of the Constitution. The power to punish persons other than Members for offenses committed against either House of Congress is not found in any express provision of the Constitution, but is an implied power inherent in legislative bodies as in courts originating from necessity and used as a means of self-protection and self-preservation, the exercise of which has long been sanctioned by custom and usage under American and English jurisprudence. Such a power is necessarily an undefined power, more or less arbitrary in its nature, and must be invoked and exercised in such summary way as may be deemed best to meet the exigencies of the situation arising in each particular case.

A question has been presented by the record in this case which leads to this inquiry: What is the extent or limitation of the punishing power of either House of Congress over persons other than Members

for acts, conduct, and practices in contempt of its authority or which are calculated to interrupt its orderly procedure? The particular question of law raised by this inquiry is, May persons who have been guilty of acts of misconduct or practices which were clearly in contempt of the House in a previous Congress be punished by this House where it is not shown by the testimony that the acts and practices complained of have extended into and affected the proceedings or been in contempt of the authority of the present House?

In this connection a further legal question arises: If the present House is not authorized to punish persons for contempt of the authority of the House in a previous Congress, is it within the prerogative of the House to punish by resolution of censure persons other than Members who have been shown to have been guilty of reprehensible conduct in connection with the affairs of the House in a previous Congress? This question has been directly raised by Subcommittee III of this committee, to which the Garrett resolution was referred. In its report the recommendation is made that the following resolution touching the conduct of certain officers of the National Association of Manufacturers and of the National Council for Industrial Defense be reported to the House with recommendation that the same be acted upon by the House:

Resolved, That the House strongly condemns the conduct of the officers and agents of the National Association of Manufacturers, namely, J. Philip Byrd, John Kirby, jr., James A. Emery, and M. M. Mulhall, in carrying on improper and reprehensible lobby activities and in engaging in systematic secret and disreputable practices against the honor, dignity, and integrity of the House of Representatives, as disclosed in the testimony taken by and in the report and findings of the select committee appointed under House resolution No. 198.

The only authority which has been brought to the attention of your committee bearing directly upon this particular point is found in the celebrated case of Andrew Jackson, then President of the United States. On the 28th of March, 1834, the Senate declared by resolution that Andrew Jackson, in removing the deposit of public money from the Bank of the United States, had assumed authority and power not conferred by the Constitution and laws of the United States, but in derogation of both.

Immediately thereafter President Jackson addressed to the Senate a protest, in part as follows:

The resolution in question was introduced, discussed, and passed not as a joint but as a separate resolution. It asserts no legislative power, proposes no legislative action, and neither possesses the form nor any of the attributes of a legislative measure. It does not appear to have been entertained or passed, with any view or expectation of its issuing in a law or joint resolution, or in the repeal of any law or joint resolution, or in any other legislative action.

Whilst wanting both the form and substance of a legislative measure, it is equally manifest that the resolution was not justified by any of the executive powers conferred on the Senate. These powers relate exclusively to the consideration of treaties and nominations to office, and they are exercised in secret session and with closed doors. This resolution does not apply to any treaty or nomination and was passed in a public session.

Nor does this proceeding in any way belong to that class of incidental resolutions which relate to the officers of the Senate, to their Chamber, and other appurtenances, or to subjects of order and other matters of the like nature—in all which either House may lawfully proceed without any cooperation with the other or with the President.

On the contrary, the whole phraseology and sense of the resolution seem to be judicial. Its essence, true character, and only practical effect are to be found in the conduct which it charges upon the President and in the judgment which it pronounces on that conduct. The resolution, therefore, though discussed and adopted

by the Senate in its legislative capacity, is, in its office, and in all its characteristics, essentially judicial.

That the Senate possesses a high judicial power, and that instances may occur in which the President of the United States will be amenable to it, is undeniable. But under the provisions of the Constitution it would seem to be equally plain that neither the President nor any other officer can be rightfully subjected to the operation of the judicial power of the Senate except in the cases and under the forms prescribed by the Constitution.

The President then proceeded to show—

the proceedings of the Senate to have been extrajudicial and the mere fulmination of a censure, such as might come from a "mass meeting" and finding no warrant in any right or duty of the body, and intended for nothing but to operate on him personally. (Benton's Thirty Years' View, vol. 1, p. 426.)

On March 16, 1837, the Senate, by resolution, expunged the resolution of censure from its Journal, declaring as its first reason:

And whereas the said resolve was not warranted by the Constitution, and was irregularly and illegally adopted by the Senate, in violation of the rights of defense which belong to every citizen, and in subversion of the fundamental principles of law and justice; because President Jackson was thereby adjudged and pronounced to be guilty of an impeachable offense, and a stigma placed upon him as a violator of his oath of office and of the laws and Constitution which he was sworn to preserve, protect, and defend, without going through the forms of an impeachment and without allowing to him the benefits of a trial or the means of defense. (Benton's Thirty Years' View, vol. 1, p. 718.)

It will be observed that in the case of Andrew Jackson, the Senate in the first instance passed the resolution, but three years later expunged the resolution of censure from its journal on the express ground that the same was not warranted by the Constitution and was irregularly and illegally adopted by the Senate in violation of the rights of defense which belong to every citizen, and in subversion of the fundamental principles of law and justice.

On March 5, 1860, Mr. John Covode, of Pennsylvania, moved the adoption of a resolution appointing a committee of five Members to investigate whether the President or any other officer had sought by improper means to influence the action of Congress against the passage of any law and whether the officers of the Government or the President have failed to compel the execution of any law, etc. The resolution was agreed to and the committee appointed, whereupon on March 29, 1860, President Buchanan in a special message protested against the resolution as an invasion of the Executive power and the indorsement of vague charges against the Executive without permitting him to be heard. This special message was referred to the Committee on the Judiciary, who reported on April 9, 1860, a resolution dissenting from the doctrines contained in the special message and saying in part:

The President of the United States under the Constitution posesses neither privilege nor immunity beyond the humblest citizen, and is less favored in this respect than Senators and Representatives in Congress. * * * He can make no plea which is denied to any other citizen and is subject to the same scrutiny, trial, and punishment, with the proceedings, hazards, and penalties of impeachment superadded. The President and the citizen stand upon equality of rights. The distinction between them arises from an inequality of duties. Wherever the conduct of the latter is open to inquiry and charge, that of the former is not the less so. * * * To repeat the point: The President is not in any respect superior to the citizen merely because he is bound to discharge more numerous duties; and he is not coequal with that branch of Government which helps to impose and define those duties. (2d Hinds., p. 1044.)

The committee distinguished between this case and the protest of President Jackson against the Senate resolution of March 28, 1834, wherein the President was censured, the resolution in that case improperly proposing censure, but in this case merely an inquiry.

Your committee is not prepared to say that on account of the failure of Congress to exercise a power or by reason of the limited number of precedents bearing upon the particular question, that no case could arise wherein the assertion of such power would be necessary in order to protect the House or the dignity and honor of its membership, but in searching the precedents we have failed to find a single case in which either House of Congress ever attempted to punish persons other than Members for contempts committed in a previous Congress. The only case we have been able to find in which Congress undertook to punish a person other than a Member by an affirmative resolution of censure is in the case of President Andrew Jackson, already referred to. If it should be contended that the adoption of the resolution of censure in that case is a precedent for such action, the contention is at once answered by subsequent action on the expunging resolution which was later adopted by the Senate in the same case. There can be no question that Congress has a right to inquire into the conduct of persons in their relation to its affairs in previous Congresses for the purpose of gathering information which may be used as a basis for remedial legislation or in dealing with its own Members. The right of either House of Congress to punish for contempts of its authority or for interfering with its proceedings is no longer questioned, but it has been held that the punishment in each particular case ceases with the termination of the Congress that imposed it. This is held in the case of Anderson *v.* Dunn, already cited. In that case the Supreme Court in discussing the extent and limitation of this power says:

> Analogy and the nature of the case furnish the answer, "the least possible power adequate to the end proposed," which is the power of imprisonment. It may at first view and from the history of the practice of our legislative bodies be thought to extend to other inflictions. But every other will be found to be mere commutation or confinement since commitment alone is the alternative when the individual proves contumacious. And even to the duration of imprisonment a period is imposed by the nature of things, since the existence of the power that imprisons is necessary to its continuance; and while the legislative power continues perpetual, the legislative body ceases to exist on the moment of its adjournment or periodical dissolution. It follows that imprisonment must terminate with that adjournment.

From the reasoning and conclusions reached by the Supreme Court in the opinion from which we have just quoted, it is manifest that the power of a legislative body to punish or censure persons other than Members rests upon an entirely different principle from its power to deal with its own members, and begins with the opening of each Congress and terminates with its adjournment. The exercise of such power by either House, it would seem by clearest inference, therefore, is limited and restricted to acts or practices in contempt of its immediate authority, or, if committed against the authority of the House, in a previous Congress, and complaint thereof is made and inquiry into such acts and conduct is instituted by the House in a subsequent Congress, the acts and conduct complained of must be repeated in defiance of its own authority before punishment can properly be imposed therefor. At least the rule heretofore has been so limited in practice.

We have found no precedents to sustain the contention that this House has power to punish persons other than Members for acts committed during the Sixty-second Congress which may have constituted contempts of the authority of the then existing House, but which in no way relate to the affairs of the present House or its Members, and we therefore conclude that grave doubt exists as to its authority to do so.

STATEMENT OF FACTS.

(3) Your committee in the foregoing pages, having reviewed the precedents and enunciated the principles of law which, in our opinion, should govern the House in punishing its own Members for disorderly behavior, and persons other than Members for breaches of its privileges and contempts of its authority, will now proceed to consider certain facts disclosed in the hearings touching the conduct of a Member of the House, namely, James T. McDermott, of Illinois, and will later in this report submit certain facts concerning the operations and activities of the National Association of Manufacturers and other associations interested in promoting or defeating legislation in the Sixty-second and previous Congresses.

On July 9, 1913, the House adopted the following resolution:

House resolution 198.

Whereas there have appeared in recent issues of various newspapers published in the United States divers statements and charges as to the existence and activity of a lobby organized by and on behalf of an organization known as the National Association of Manufacturers for the purpose of improperly influencing legislation by Congress, the official conduct of certain of its members and employees, the appointment and selection of committees of the House and for other purposes designed to affect the integrity of the proceedings of the House of Representatives and its Members: Therefore be it

Resolved, That the Speaker appoint a select committee of seven Members of the House and that such committee be instructed to inquire into and report upon all the matters so alleged concerning said Representatives, and more especially whether during this or any previous Congress the lobbyists of the said National Association of Manufacturers, or the said association through any officer, agent, or member thereof, did, in fact reach or influence, whether for business, political, or sympathetic reasons or otherwise, the said Representatives or any one of them or any other Representative or any officer or employee of this or any former House of Representatives in or about the discharge of their official duties, and if so, when, by whom, and in what manner.

Said committee shall also inquire whether money has been used or improper influence exerted by said National Association of Manufacturers or other person, persons, association, or organization or any agent thereof to accomplish the nomination or election or secure the defeat for nomination or election of any candidate for the House of Representatives, and said committee shall likewise inquire whether Members of the House of Representatives have been employed by any of said associations or have knowingly aided said associations or any of them for the accomplishment of any improper purpose whatever.

Said committee is also directed to inquire whether improper influence has been exerted by said association or by any other association, corporation, or person to secure or prevent the appointment or selection of any Representative to any committee of the House in this or any other Congress.

Said committee shall also inquire whether the said National Association of Manufacturers or any other organization or corporation or association or person does now maintain or has heretofore maintained a lobby for the purpose of influencing legislation by Congress and ascertain and report to what extent and in what manner, if at all, legislation has been improperly effected or prevented by reason of the existence of such lobby, if it be found to exist now or to have existed heretofore.

Said committee, or any subcommittee thereof, may sit in the city of Washington or elsewhere to conduct its investigations during the sessions of the House or recess of Congress. All meetings of said committee or any subcommittee, for the taking of testimony or hearing of argument, shall be open to the public. It shall have power

to employ such legal or clerical assistance as may be deemed necessary, to send for persons and papers and administer oaths, and shall have the right to report at any time.

The Speaker shall have authority to sign and the clerk attest subpœnas during the recess of Congress. The expenses of said inquiry shall be paid out of the contingent fund of the House upon vouchers approved by the select committee signed by the chairman thereof, and by the Committee on Accounts, signed by the chairman thereof.

In accordance with the resolution the Speaker appointed as members of the committee Messrs. Garrett, of Tennessee; Cline, of Indiana; Russell, of Missouri; Roddenbery, of Georgia; Stafford, of Wisconsin; Willis, of Ohio; and J. I. Nolan, of California. Very shortly after his appointment Mr. Roddenbery was forced by the illness which subsequently caused his untimely death to resign, and Mr. Ferris, of Oklahoma, was appointed to succeed him. At a later date Mr. Nolan also retired on account of a severe and protracted illness, being succeeded by Mr. MacDonald, of Michigan.

On December 9, 1913, by appropriate resolution heretofore set out, the House referred the report, findings, and testimony of the select committee to the Committee on the Judiciary with directions to report to the House at the earliest practicable date what action if any should be taken by the House thereon.

Your committee reports that the testimony taken by the select committee appointed as aforesaid and the report and findings thereon disclose certain facts touching the conduct of James T. McDermott, a Representative from the State of Illinois, which, in the judgment of your committee, are of such gravity as to require further action thereon by the House. In the report of the select committee, pages 51 to 68, inclusive, will be found a summary of the evidence relating to the conduct of Mr. McDermott, from which we quote the following extracts, to wit:

REPRESENTATIVE JAMES T. M'DERMOTT.

Representative James T. McDermott, of Illinois, is also listed in the summary among those whom the N. A. M. had no difficulty in reaching and influencing for business, political, or sympathetic reasons, and mentioned in the personal narrative of Mulhall.

* * * * * * *

It is true that from the time of Mr. McDermott's entrance into Congress up to a few weeks before the publication of the articles in question, the relations between him and I. H. McMichael were of an exceedingly intimate and friendly character; and they were much together. McMichael did undoubtedly aid him to a very considerable extent at times with his correspondence and clerical work, both while a chief page of the House and during the time subsequent. We think the fair conclusion from all the testimony and circumstances developed is that Mr. McDermott knew of the employment of McMichael by Mulhall, and that he understood what Mulhall was engaged in—that is, that he was a lobbyist for the N. A. M.

Mr. McDermott has denied in his testimony very vigorously that the relations between Mulhall and himself ever became close and of an especially friendly character. We think, however, that they did. While we are of opinion that Mulhall has exaggerated largely the intimacy existing between them, we are, at the same time, of opinion that Mr. McDermott has unduly minimized it. Your committee has no doubt that these three men were much in each other's society, that they frequently consorted socially together in this city, and were upon terms of perfect understanding and friendliness. The evidence in the record as to this is too voluminous and convincing to admit of any other conclusion. We think, too, that the weight of the testimony is that Mr. McDermott did obtain occasional sums of money from Mulhall, in the way of small loans, when they were together, but the testimony convinces us that these were personal acts of Mulhall, and we do not believe that he let McDermott have this money with a view of corrupting him.

Neither does your committee believe that McDermott received from Mulhall in the way of loans or otherwise anything near the amount of $1,500 to $2,000, as alleged in the newspaper article. When examined upon this matter Mulhall was unable to give amounts or dates even approximately. We feel asssured that this has been exaggerated. We think the most reasonable theory is that when they would be together in a social way in cafés and other places and McDermott would be in need of money he would borrow small amounts from Mulhall. Mr. Mulhall admits in his testimony that such transactions were purely personal, that he never reported them to his organization, and that they were not charged to it, but treated as purely personal matters.

That Mr. McDermott may have borrowed some moneys from McMichael at times which the latter received from the N. A. M. we think not improbable, but we do not believe there was any understanding that he was to regularly receive a portion or that there was any corrupt motive in the act. Probably it was an act of impropriety for Mr. McDermott to solicit and accept loans from McMichael from this salary, knowing its source.

The fact of the use of a room in the Capitol by Mr. Mulhall has been referred to heretofore. In the article he claims that this was procured for him by Mr. McDermott. We think this is true, or, at least, if he did not procure it for him, he did, having control over it, knowingly permit him to use it. The facts relative to this room, concerning which so much has been said, are that during the Sixty-second Congress two small adjoining rooms in the basement of the Capitol, Nos. 27 and 29, respectively, were allotted to the Committee on Expenditures in the Department of Commerce and Labor, of which Mr. Rothermel, of Pennsylvania, was chairman, and Mr. McDermott was ranking member. They were not used for committee purposes, however, but were turned into storage rooms by the chairman, who seldom visited them and who gave Mr. McDermott the right to use them also, and Mr. McDermott in turn gave to McMichael a key or, with his knowledge and consent, McMichael had a key made and used the room freely; and eventually, at the suggestion of either Mr. McDermott or Mr. McMichael (and we do not deem it material which, for we do not doubt the former had knowledge of the fact and acquiesced willingly), Mulhall was furnished a key and given the use of the room and did use it for a few hours each day, having a stenographer come there and take the dictation of his correspondence relative to his association work. His use of the room was limited to a few weeks during the summer.

In testifying Mr. Mulhall alleged that the information received by him on June 3, 1910, from McMichael, as to the proposed offering of an 8-hour amendment to the sundry civil bill, was furnished by McDermott to McMichael, and the intimation is that it was so given in order that he (Mulhall) might have opportunity to become active against it. McMichael verifies the statement that Mr. McDermott gave him the information, but (although he expresses his opinion) he is cognizant of no fact that would legitimately lead to the conclusion that it was done for the purpose intimated by Mulhall, nor do we believe it was.

We think the probabilities are that Mr. McDermott, who is a member of a labor union and has supported the bills and amendments known as "labor measures," had information that such an amendment would be offered and that he told McMichael in order that the latter might call him to the Chamber to vote should he chance to be out at the time it was offered. It is in evidence that he did this at times, and we think this the probable fact as to this incident.

As for the use of McDermott's frank, we do not find from the evidence that he authorized its use to an extent, or that it was used by or for Mulhall to an extent, that might properly be classed as abuse thereof. Some books and documents were mailed under it to officials of the association by Mulhall, but it is not in evidence that its use was so delegated by him as to be a violation of the law relative to the franking privilege.

Mr. Mulhall is evidently in error as to the time of his first meeting with Mr. McDermott. He states in the article that he first interviewed him when he came to Washington in 1907. The Mulhall correspondence and his later testimony, however, indicate conclusively that his first interview must have been at the time of his tariff-commission canvass among Members in the early part of 1909. It was upon this occasion, he swears, that Mr. McDermott used the language which is the occasion of his comment in the article, where he says "he used language at this interview which I thought was not possible for a man filling the high position he filled to dream of using to any stranger who called upon him."

However shocking this language may have been to the sensibilities of Mr. Mulhall, your committee has not deemed forms of expression a matter demanding investigation under the resolution.

A very great deal was said in the article concerning Mr. Mulhall's activity in behalf of Mr. McDermott in his campaign for renomination in 1912. Inasmuch as Mulhall was not then connected with the N. A. M., and there is no allegation that it took any

part in the contest or had any interest therein, this, perhaps, does not come within the resolution, but so much has been said and testified concerning it that your committee feels it should, in justice to all, give a brief report of the facts as disclosed by the record in this regard.

Mr. Mulhall did, at the instance and request of Mr. McDermott, go to Chicago in the spring of 1912 to aid him in his contest for renomination, his principal purpose in going being to raise funds for his campaign. McMichael advanced the money, $75, to pay Mulhall's expenses, and there is some reason to believe that something had been said and possibly a tacit agreement was in effect that Mulhall was to receive for his services a portion of the funds he should collect, and was to repay McMichael out of the amount. He arrived at Chicago and registered at the Sherman Hotel on March 28. From the testimony taken, and particularly that of Mr. George Fleming, a brother-in-law of Mr. McDermott, we are of the opinion that perhaps Mr. Mulhall's activities in the matter of collecting campaign funds were not of very great aid to Mr. McDermott. Mr. McDermott himself accompanied him to call upon some of the parties from whom funds were solicited, and Mr. Fleming accompanied him to see the others. About $500 were collected. The names of the contributors and the amounts were reported in Mr. McDermott's sworn statement of expenses filed with the Clerk of the House. Mr. Mulhall expressed the opinion before the committee that they collected more, but was unable to state facts or names with sufficient definiteness as to justify us in so finding.

The event of this campaign which is most strongly stressed by Mr. Mulhall to cast discredit upon Mr. McDermott is the contribution made by Mr. Harold McCormick, or rather the developments in regard thereto.

He alleges that Mr. McCormick promised a contribution when they called on the afternoon of March 28, the day of his arrival in Chicago, and stated that he would send check payable to Mulhall to the Hotel Sherman; that the check did not arrive, and that he was pressed for money to meet his expenses; that somewhere about April 5 to 8 he determined to leave Chicago, and settled his hotel bill and gave an order to forward his mail to Baltimore; that subsequently during the day he was persuaded to remain by the insistence of Mr. Fleming and reregistered and was assigned to another room in the hotel; that he then remained until about the 18th of April; that he had to pawn his watch charm to obtain funds to settle his hotel bill and pay his fare home; that upon his arrival he found McCormick's check and cashed it; that he subsequently learned that a duplicate check had been delivered to Mr. McDermott and cashed by him, and charged that the indorsement of his name on same by Mr. McDermott was unauthorized and constituted a forgery.

We find the facts to be as follows: Mr. McCormick did promise a $250 contribution, and on April 1, 1912, issued or caused to be issued a check, No. 19991, for this amount payable to Mr. Mulhall, and it was presumably mailed to him at the Sherman Hotel. Nothing was heard of the matter further by Mr. McDermott or Mr. Fleming, although they made inquiry in regard to it of Mr. Mulhall at different times, and he stated he had not received it. Mr. Mulhall did leave the Hotel Sherman some time before 9 o'clock p. m. April 8 and was not again at that hotel during that month. The records of the hotel placed in evidence are conclusive upon that point. On April 12, 1912, there was deposited with the National Exchange Bank of Baltimore, Md., by Hochschild, Kohn & Co. and on the same date transmitted by the bank to its Chicago correspondent bank this check for said sum, the firm of Hochschild, Kohn & Co. having cashed it for M. M. Mulhall. It passed through the Chicago clearing house and reached the bank upon which it was drawn, the Merchants Loan & Trust Co., where it was paid on April 15.

It is perfectly evident that Mr. Mulhall is mistaken as to the time he left Chicago. He must have arrived at Baltimore, his home, prior to or by April 12. We think undoubtedly that he left on April 8. All records of forwarding addresses made by the hotel at that time have been destroyed, but from the testimony of the auditor, Mr. Schopen, before your committee (p. 1654) it is perfectly clear that at no time before April 8 did Mr. Mulhall surrender his room and reregister. He occupied the same room, No. 622, from March 28 to April 8, and no other room after that date. He does not claim to have changed hotels, but states that he was at the Sherman during his entire stay.

In the meantime, on April 8, Mr. McDermott, having heard nothing of the check, called personally upon McCormick and there was issued a duplicate which was delivered to him, indorsed by him, and used to pay his campaign expenses, same being reported in his official statement. At the time of issuing the duplicate the bank was notified not to pay the original, but by oversight it did pay it. Subsequently, when the fact of the issuance of the two checks and their payment by the bank was called to his attention, he arranged with the cashier, Mr. Estes, and repaid to him the $250, making the last payment about the last of June, 1913.

In view of all the facts and circumstances your committee does not feel that the course of Mr. McDermott in this matter is subject to the slightest legitimate criticism. The duplicate check, it is true, was payable to Mulhall, as was the original, but it was for Mr. McDermott's use and benefit that it was issued. We think he had the moral right to indorse the name of Mulhall to it.

It should be stated, in passing, that the primary election in which Mr. McDermott was nominated was held on the 9th of April, a circumstance which strengthens the conclusion that Mulhall left on the 8th. He would have had no occasion to remain until the 18th.

Your committee is of opinion that the most serious question of propriety affecting Mr. McDermott is not in connection with the N. A. M. or the other matters above related, but grows out of his acts and dealings with the Liquor Dealers' Association of the District of Columbia and with George Horning, one of the pawnbrokers, to which allusion has been made.

Beginning on page 490 of the record, I. H. McMichael testifies at length and with great detail relative to Mr. McDermott's relations with the pawnbrokers and in the course of this states flatly and unequivocally that McDermott (see p. 494) told him that the pawnbrokers raised about $10,000 to be used in the effort to defeat this legislation, and that he, McDermott, got about $7,500 of this amount. He states that upon one occasion in 1911 he and Mr. McDermott went to New York and that in company with George D. Horning they had a conference with one John A. McDermott, who is a representative of the organized brewers of the United States, and has his headquarters in that city, in which conference Representative McDermott evinced his interest in the pawnbroker's situation relative to this legislation. He states that upon this occasion Representative McDermott registered at the Hotel Navarre under the name of J. T. McDougal, and that they spent a day and night in the city of New York; he claims not to have known the purpose for which the trip was made to New York until after their arrival there, and his testimony is to the effect that he then learned that its chief purpose was to try to aid Horning in securing influence to defeat the pawnbroker legislation.

He further testifies as to procuring loans for McDermott from Horning and Heidenheimer, and also to procuring loans for himself from these men and McDermott aiding him in settling them, or, rather, securing the return of his pledges without the payment, in one instance, of the principal, and in another, the interest, and relates other circumstances to show the alleged close relations of Mr. McDermott with the pawnbrokers and his influence with them. He states that during one of his campaigns Mr. McDermott called upon Horning for aid and that in McDermott's office he saw a telegram which had been sent the latter at Chicago by Horning and being undelivered was returned to McDermott's Washington office stating that he was sending some money, $200 or $2,000, the witness did not remember the amount. Representative McDermott denies that he received any money from any of the pawnbrokers for his activity in the legislative matters and denies that he took any particular interest in it or sought to aid them. He admits that on one or two occasions Horning or Heidenheimer advanced him money on the checks for his clerk hire and admits that he is indebted to Horning in the sum of about $1,000 which he has borrowed from him in small sums from time to time during the past several years. He admits going to New York and registering as alleged and of seeing Horning in John McDermott's office, and admits that Horning occupied an adjoining room at the same hotel, but denies that the visit to New York or to the office was due to any understanding with Horning or by any prearrangement or that he sought in any way to interest John McDermott in aid of the pawnbrokers.

Mr. John McDermott, who is not related in any way to Representative McDermott, but who testifies that they are intimate personal friends, corroborates him in the statement that he never discussed this legislation with him at any time and never sought to interest him. He states that Horning, with whom he had had some dealings and whom he had met through the Representative, came to him to try and get him to attempt to set influence in motion that would interest "Tammany Congressmen" against the bill, that he declined to accede to the request in any way, and that the conversation was very brief. Horning states the same in substance. John McDermott states that when Horning first came to his office on that day, he asked him if he had seen Jim (meaning the Representative) recently, and Horning responded, "I think, maybe, he will be over to-day. I thought nothing more about it, and in a little while Jim and McMichael came in." (See p. 1730.)

Horning states that he became acquainted with Mr. McDermott shortly after his first entrance into Congress; that Mrs. Horning received a letter from relatives who lived in Chicago and who were friends of the Representative when he first came to Washington, suggesting that they call upon the family; that Mrs. Horning did so, and

the families became acquainted and very friendly; that they exchanged visits; that upon one occasion Mr. McDermott, while his family was away, boarded or stayed at the Horning home for a few weeks. He denies that Mr. McDermott took any particular interest in the pawnbrokers' legislation or that he made any efforts to get him to do so.

He admits that during the 1912 primary campaign of Mr. McDermott he let him have $200 to be used for the payment of campaign expenses, and claims that this was a loan, and states that at various other times since their acquaintance began he has loaned him money, some of which he has repaid, and swears that Mr. McDermott is now indebted to him in the sum of $1,085, being the aggregate of various loans, and includes the $200; that he has no security of any character for this amount; that it has been due, nearly all of it, for more than 18 months; and that he has no note or other evidence of the indebtedness. He denies that any part of this came out of the funds raised by him to be used in connection with the loan-shark and pawnbrokers' legislation, and states that it was a purely personal loan made to him because of personal friendship, and that after the total amounted to about $1,000 he declined to lend him any more.

Mr. McDermott agrees with this statement of Horning practically in toto.

McMichael was vigorously cross-examined by counsel for McDermott and admitted that he had made some false statements to different parties relative to some phases of the investigation and was sought to be impeached as to others, but he adhered rigidly to his assertion relative to the pawnbroker matter.

Such is the substance of the testimony bearing upon this phase.

In a previous part of this report we have set out the facts relative to the several organizations engaged in the business of dealing in intoxicating liquors and related businesses in the District of Columbia and have given the story of their activity relative to the so-called Jones-Works excise bill. It will be remembered that all these organizations are federated into a central body, which is supported by dues paid by its constituent associations, and that during the pendency of the Jones-Works bill a special assessment was levied to procure additional funds to be used in fighting this legislation.

In September, 1912, at the instance and suggestion of Mr. Hugh F. Harvey, secretary of this central body, there was loaned to Representative McDermott out of its treasury the sum of $500. It does not clearly appear whether this $500 was out of funds raised by the regular payment of dues to the central organization or out of that raised by the special assessment referred to and paid into the central body's treasury. His note due at 90 days and bearing 6 per cent interest was taken for this amount without security, and the same has never been paid. Mr. Harvey testified (p. 1186) that it was placed in a bank for collection and his impression is that one or two notices may have been sent to Mr. McDermott, but beyond this, if this really occurred, there have been no other efforts of any kind or character to collect this unsecured paper due in December, 1912. This was an unusual and extraordinary transaction. Mr. Harvey says:

"It was entirely against my grain and against what I had thought should ever be done, but in this case he seemed desperate."

Mr. McDermott, testifying as to this, says that he was in sore financial straits; that he had lost a very considerable sum of money in a business venture—a venture relating to the manufacture of an airship; that his campaign for renomination had been a costly one; that he and his relatives had borrowed money for this; that his mother was security upon a note which was about due and that her home was in danger; that he could not borrow the money in Chicago; that he came to Washington to try and procure it from Horning, but failed; that he met Mr. Harvey on the street and told him his situation and that he negotiated the loan for him. He further states, "It had nothing to do with any legislation at all." He swears that this transaction had no effect upon his position on the excise legislation; that his views upon the liquor question are well known and have been consistently the same; that he is a "wet" and was always opposed to the Jones-Works bill; that he never really read the bill; and that the loan had no possible connection with the pending legislation; that it was a bona fide loan, which he is obligated and intends to repay.

Mr. Harvey testifies that it had no connection with the legislation; that he does not remember ever having discussed the Jones-Works bill or other liquor legislation with Mr. McDermott; that he understood his position on the liquor question was in accord with the wishes of the local organization all along, and in substance that the loan was not made with any purpose or thought of in any way influencing his attitude.

Your committee is of the opinion that Mr. McDermott knew the source from which his fund came, and that he sought the loan knowing the facts. He knew Mr. Harvey

and understood his relations to the liquor dealers' organizations of the District. The committee can not escape the significance which attaches to the fact that no security was asked or given, and that no effort was ever made to collect the note, though long past due.

We can not say that Mr. McDermott's vote was influenced by this transaction. We have no doubt he would have voted against the Jones-Works bill had it not occurred, but we do not believe that the loan would have been made to him had he not been a Member of Congress, nor do we believe it would have been made had he been favorable to the Jones-Works bill.

On page 1193 of the hearings Mr. Harvey testified as follows:

"Mr. RUSSELL. You did know, I believe I understood you to say, that he was friendly to the legislation that you people favored?

"Mr. HARVEY. Well, I had never had reason to think he was unfriendly.

"Mr. RUSSELL. Did you know, when the legislation was presented to the House, what his attitude was on it?

"Mr. HARVEY. I do not recall.

"Mr. RUSSELL. Well, would the fact that he was supposed to be friendly to the legislation have something to do with making this loan?

"Mr. HARVEY. I do not know. I suppose that he would consider it in that friendly spirit that a great many others would be; but as for his doing anything—if he has ever done anything to help us in any way—I do not know it and have never discovered. I do not know whether he could or not.

"Mr. RUSSELL. You would not have loaned $500 to him if you had understood he was unfriendly to you, would you?

"Mr. HARVEY. That would not be a natural transaction; but I do not know what would have been done under the circumstances with a man as distressed as he appeared to be."

Your committee can go no further than ascertain and report to the House the facts as it finds them. The Members of the House know Mr. McDermott, know his ideals and his characteristics as the public generally does not and in the nature of things can not know them. His training and associations have not given him the ethical perceptions and standards relative to public office that usually characterize public men.

We can not say that he has been corrupted in his votes, but some things which a private citizen may do with impunity must be avoided by one in official station, and we should feel that we had shirked a duty which we owe to the House and the country did we not say that we are driven, much to our regret, to the conclusion that he has been guilty of acts of grave impropriety, unbecoming the dignity of the distinguished position he occupies.

FINIS J. GARRETT, *Chairman.*
CYRUS CLINE.
JOE J. RUSSELL.
SCOTT FERRIS.
WILLIAM H. STAFFORD.
FRANK B. WILLIS.

The facts set forth in the report of the select committee and the conclusions and findings of the select committee are abundantly sustained by the testimony.

It is therefore pertinent to inquire what further action, if any, should be taken by the House in reference to the conduct of Representative James T. McDermott as disclosed in the hearings of the select committee?

Applying the principles of law herein enunciated, and observing the rules of sound policy, which we couclude ought to govern the House in dealing with a Member for improper conduct, we fail to find in the record that satisfactory character of evidence which in our judgment would warrant or justify the expulsion of Representative James T. McDermott. At the same time we do not exonerate him and can not and have no disposition to exculpate him from the imputations and consequences resulting from his own improper acts as disclosed by the testimony embodied in the hearings.

We therefore recommend the adoption of the following resolution by the House:

Resolved, That Representative James T. McDermott, while a Member of a former Congress, in his associations with M. M. Mulhall, a lobbyist of the National Association of Manufacturers, and in accepting loans of large sums of money from George D. Horning, a pawnbroker, and from Hugh F. Harvey, a member of the Retail Liquor Dealers' Association, both then vitally interested in legislation pending before such former Congress, was guilty of acts of impropriety incompatible with that high sense of honor and decorum which should characterize the conduct of a Member of this House, and that the House strongly condemns such conduct of the said James T. McDermott, and declares that he was thereby guilty of acts of grave impropriety unbecoming the distinguished position he held.

(4) The select committee appointed under House resolution 198 investigated the lobby activities of the National Association of Manufacturers, the National Council for Industrial Defense, the American Federation of Labor, District of Columbia organizations, the loan-shark associations, the pawnbrokers' associations, and other associations concerned in promoting or defeating legislation pending before Congress. The testimony covers a wide range and discloses many startling facts concerning the operations of some of the associations referred to. The select committee, in a very carefully prepared and exhaustive report, set forth the salient facts developed in the hearings, and have furnished in that report a systematic arrangement of the evidence bearing upon particular persons and subjects, and have made a careful analysis and synopsis of the testimony in the case. The Committee on the Judiciary, not having heard the witnesses, would be slow to override the conclusions of the select committee or to draw inferences from the testimony different from or in addition to those set out in the report and findings of the select committee. In reviewing the facts we therefore submit herewith, for the consideration of the House and as a part of this report, the following extracts from the report of the select committee:

AS TO THE WORLD AND TRIBUNE ARTICLES.

For a proper understanding of this report, it must be borne in mind that the original publications appearing in the World and Tribune consisted of two distinct parts. One part was what may be called a personal narrative. This was written by Martin M. Mulhall and appeared over his signature. The other was what may be called a summary. This was prepared by Louis Seibold, a member of the World staff, and was based, according to his testimony, upon (1) the personal narrative of Mr. Mulhall, (2) a mass of correspondence, purporting to be letters, copies of letters, telegrams, notations, and various other written and printed documents accumulated and filed by said Mulhall during his period of service as an employee of the N. A. M. and subsequent thereto, and by him turned over to the World, and (3) personal statements made by Mulhall to Seibold during the time of the preparation of the summary. Because of the extreme length of the articles it is not deemed desirable to set them out in full, but all parts material to the report will be subsequently quoted or epitomized.

THE N. A. M.

The N. A. M. had its genesis in 1895, being then launched as a voluntary organization or association. It continued as such until 1905, in which year it was incorporated under the laws of the State of New York, its corporate name being "The National Association of Manufacturers of the United States."

It is stated in its charter that "the corporation is not organized for pecuniary profit and shall not make or declare dividends."

Its purposes, as set forth in the charter of incorporation, are as follows:

"The general objects and purposes for which the said corporation is formed are the promotion of the industrial interests of the United States, the fostering of the domestic and foreign commerce of the United States, the betterment of the relations

between employer and employee, the protection of the individual liberty and rights of employer and employee, the education of the public in the principles of individual liberty and ownership of property, the support of legislation in furtherance of those principles, and opposition to legislation in derogation thereof.

"The particular objects and purposes of said corporation are to establish and maintain a mutual and cooperative organization of American manufacturers in the United States for the fostering of their trade, business, and financial interests, to reform abuses relative thereto, to secure freedom from unlawful and unjust exactions, to diffuse accurate and reliable information as to the standing of merchants and other matters, to procure uniformity and certainty in the customs and usages pertaining to the trade, business, and financial interests of the members of said corporation, to settle differences between its members, to promote a more enlarged and friendly intercourse between the manufacturers of the United States, and to do all things necessary to carry out the aforesaid purposes for the mutual benefit and protection of its members under and subject to such regulations, conditions, and limitations as may be prescribed by the by-laws." (See charter, p. 41, House hearings.)

The committee understands from the testimony that its purposes prior to incorporation were the same in substance as they have been since, but its activities have been gradually developed and now cover a much wider range than they did in the earlier days.

J. P. Bird, general manager of the N. A. M., states these activities in part as follows:

"We publish two export magazines, we publish a domestic magazine, both known as American industries. We conduct a large foreign department in which are several subdepartments, a legal department wherein we advise our members on questions of corporation law and State law, a foreign collection department, and a domestic collection department." (Testimony, Bird, p. 2036, House hearings.)

Mr. Bird does not, however, cover in this statement all the efforts and ambitions of this association, and many others will be hereinafter pointed out.

The correspondence between officials and employees of the association laid before your committee and placed in evidence shows it to have been an organization having purposes and aspirations along industrial, commercial, political, educational, legislative, and other lines, so vast and far-reaching as to excite at once admiration and fear—admiration for the genius which conceived them and fear for the ultimate effects which the successful accomplishment of all these ambitions might have in a Government such as ours.

The publication work of the N. A. M. is carried on through another corporation of the State of New York, organized by substantially the same persons as those who organized the N. A. M. and in the same way, the latter corporation being styled "The American Manufacturers' Co." This was organized, as the committee understands, because of the inability of the N. A. M. to do that particular work desired, under the terms of its charter and the laws of the State of New York. In other words, the N. A. M. not being organized "for pecuniary profit," caused, or its responsible agents caused, the American Manufacturers' Co. to be chartered in order that through this entity its publication business and other purely business operations might be carried on.

The membership of the N. A. M. at this time, as we understand from the testimony, is, and has for several years been, approximately 4,000. The membership has varied from time to time, some dropping out and other new members joining. The membership consists of individuals, firms, copartnerships, corporations, etc., who are engaged in manufacturing enterprises of nearly all kinds and characters. The members are located in all parts of the United States. An annual fee of $50 is charged, so that the association has from this source an annual income approximately of $200,000. It has a department for the solicitation of members which is now and has been since 1909 in charge of Mr. F. F. Porter. This department has a force of seven men who solicit members throughout the country. As compensation for his services he receives 70 per cent of the first annual fee paid by a member, and out of the funds received by him in this way he pays the expenses of his department.

There is a board of directors consisting of 23 members (see testimony, Bird, p. 2036, pt. 24), which meets four times a year, and an executive committee consisting of 5 members, which meets "during the interim of the board meetings or at the call of the president."

The present president is George E. Pope, of Hartford, Conn., who is not a salaried officer; the general manager is J. P. Bird, who receives a salary as such of $7,500 per annum; the secretary is George S. Boudinot, who receives a salary of $4,500; and the treasurer is Alonzo B. See, whose salary is merely nominal, just sufficient to cover his bond. The principal office is located in the city of New York and there is an office force of about 60 people.

The association has numerous standing committees, as well as special and select committees, appointed from time to time to deal with the many subject matters which challenge its interest. It holds annual meetings or conventions, usually in the month of May, and in such city as may be selected, at which its business matters are attended to and at which there are discussions by its members and others of the various questions before it. The minutes of these annual proceedings are published and there have been filed with the committee and placed in evidence, but not published in the record because of their length, copies of the several reports of these annual conventions.

THE N. C. I. D.

The organization of the National Council for Industrial Defense was perfected in January, 1908, following a number of conferences held in the city of New York, the first of which was in August, 1907. It seems that as early as June, 1907, Mr. James W. Van Cleave, who was at that time president of the National Association of Manufacturers, sent out a circular letter addressed to various industrial organizations, probably confined to what were known as national organizations, as distinguished from State and local entities, inviting them to meet in New York and consider methods of cooperation. This letter of Mr. Van Cleave has been placed in evidence and will be found at page 2246 of the House hearings. It calls attention to the necessity of having some central committee through which the various industrial organizations might work upon those matters concerning which they were agreed, including "a carefully organized legal department, which will do all the work of the council, advise local organizations, assist interstate business organizations in the prosecution in every part of the country of labor organizations which violate interstate and antitrust acts, carry on prosecutions of every case of lawlessness during strikes, the proper prosecution of attempted boycotts, or assault and intimidation, and a careful compilation and distribution of all work handled by the legal department."

In addition to these things the suggestion lays special and particular emphasis upon the necessity of having some central organization in connection with legislative work. It says:

"Congress will again be in session in a short time, and it is more essential than ever to give the most careful attention to Federal and State legislation."

The National Association of Manufacturers, through its president, having thus taken the initiative, various industrial organizations did meet in conference, as stated, in August, 1907, and after that time three other conferences were held before the final agreement, which produced the N. C. I. D., was reached. The final agreement, in brief, seems to have been that there should be created and organized an association known as the National Council for Industrial Defense. This council thus created consisted of three persons, a president, a secretary-treasurer, and a counsel. The purposes of this council are stated in resolutions adopted August 19, 1907, as follows:

"Said council shall have power—

"1. To establish and maintain a legislative bureau.

"2. To establish and maintain a legal bureau.

"3. To establish and maintain a bureau of publicity and education."

Mr. John Kirby, jr., was selected president of the council and has served since that time. At the time of his selection he was a prominent member of the board of directors of the National Association of Manufacturers and was president of that organization from 1909 until 1913, and he is now a member of the board of directors and of the executive committee. Mr. Bird, the secretary-treasurer of the N. C. I. D., was at the time of his selection general manager of the N. A. M. and has continued in that position until the present time. Mr. James A. Emery, the counsel for the N. C. I. D., had been previous to his selection as such connected with an organization known as the Citizens' Industrial League in a relation somewhat similar to that he now bears to the N. C. I. D. Since the organization of this council there has never been a meeting of the members of the council. It has no by-laws and no constitution other than that contained in the resolutions adopted at the time of its organization. There is no provision in any of its articles for a meeting of its members, and the only method by which a meeting could be had would be for the chairman to issue a call for the same, and, as testified by Mr. Emery, "there is no compelling direction that would force him to do so."

As secretary-treasurer of the N. C. I. D. Mr. Bird receives a salary of $3,000 per annum; Mr. Emery, as counsel, receives a salary of $12,000 per annum and an allowance for expenses, the amount of which is not fixed. The president receives no salary.

The membership of the N. C. I. D. consists not of persons, but of associations. These number about 250. It is most largely, however, the creation of the N. A. M.,

and in the particular work performed by the N. C. I. D. the two are practically one. M. Kirby defined the situation when, in answer to an inquiry during his examination by the committee, he said that the N. C. I. D. is the mouthpiece of the N. A. M.

There is no fixed fee for membership in the N. C. I. D., and it is supported financially by voluntary contributions on the part of its members. Mr. F. F. Porter, who has general charge of the solicitation of members for the N. A. M., also performs the same service for the N. C. I. D. and receives a commission of 33⅓ per cent of the amount collected from members of the latter organization, paying the expense of his department out of this, as in the case of the N. A. M.

From the testimony taken the committee is of the opinion that the N. C. I. D. was organized and has been kept in existence for two reasons:

First. It enabled the centralization for particular work, especially political and legislative effort, in which a number of organizations and associations, the N. A. M. distinctly, were interested.

Second. Through the instrumentality of the N. C. I. D. the N. A. M. and other affiliating associations were enabled to more conveniently and expeditiously engage in political and legislative activities and make expenditures for purposes which would not have been permitted the N. A. M. by the terms of its charter under the laws of the State of New York.

NATIONAL TARIFF COMMISSION ASSOCIATION.

Following the November election of 1908 there began a very active agitation for the creation of what is commonly termed a "Tariff Commission." Among those strongly favoring this was Mr. J. W. Van Cleave, now deceased, who at that time was president of the N. A. M. Other officials and members of the association were likewise favorable, and very active efforts were begun to build up sentiment throughout the country and in the Congress in its behalf. Largely due to Mr. Van Cleave, a convention of those interested was called to assemble in Indianapolis, Ind., in February, 1909, for the purpose of discussing this question and promoting the views entertained. To Mr. M. M. Mulhall, who was then in the employ of the N. A. M., was assigned the work of sounding Members of Congress as to their views upon this subject and extending verbal invitations to them to attend the Indianapolis meeting.

At the Indianapolis convention a committee of one hundred was appointed and at the time, or shortly subsequent, there was organized the National Tariff Commission Association as a voluntary organization. It is still in existence and has headquarters in New York City. The N. A. M. and the N. C. I. D. became members, as did a large number of other organizations, persons, firms, corporations, and associations. The purpose of the N. T. C. A. seems to have been to work for the establishment of a "nonpartisan semijudicial tariff commission—permanent in character." The National Association of Manufacturers, or its responsible officials, unquestionably fathered the N. T. C. A., and, in so far as we can determine from the evidence adduced, it was the latter's chief financial stay and supporter.

THE WORKINGMEN'S PROTECTIVE ASSOCIATION.

From time to time throughout the hearings had by your committee reference is made to an organization known as the Workingmen's Protective Association.

This organization was first formed, it appears, by Mr. Mulhall in the city and county of Baltimore, Md., during the political campaign of 1900, which was prior to the time that he became connected with the N. A. M. According to his testimony it was for political purposes, solely to aid the Republican organization in that campaign, and the expense incident to its organization and work were at that time paid by the Republican national committee. Subsequent to this, to wit, in 1903, after Mulhall had been employed by the N. A. M., at the suggestion of Marshall Cushing, then managing the political work of the N. A. M., the organization was revived and strengthened for the purpose of participating in a local campaign in Baltimore in opposition to the city ticket which was being supported by United States Senator McComas, of Maryland, who was being generally antagonized by the N. A. M. on account of his position upon what are generally known as "labor questions"—that is, certain legislation in which labor unions were taking an active interest. The expenses at this time were paid by Mr. Cushing, acting for N. A. M.

At different times after this, Mr. Mulhall, acting for the N. A. M., organized this body under the same name in different sections of the country for political purposes. The organization was never more than local in character and its existence was temporary, it appearing as political exigency seemed to require and disappearing after

the particular function desired had been performed. It seems to have been composed of members of organized labor, apparently those who did not sympathize in all respects with the political policies and purposes of the labor unions generally. It was by the organization of this body and through it that Mr. Mulhall performed a large part of the political "field work" delegated to him by the N. A. M.

THE AMERICAN FEDERATION OF LABOR.

In the course of its investigation, under the resolution, your committee inquired into the political and legislative activities of the American Federation of Labor, examining at length its president, Mr. Samuel Gompers, and its secretary, Mr. Frank Morrison.

The American Federation of Labor (hereinafter referred to as the A. F. L.) is composed of about 118 national unions of trades and industries, including organizations in the Dominion of Canada and in the American possessions. It was organized at Pittsburgh, Pa., in November, 1881, following a preliminary meeting held at Terre Haute, Ind., about the middle of that year, at which a call was issued for the Pittsburgh convocation. It has grown steadily from a small beginning until there are now in the various organizations composing it approximately 2,050,000 individual members. The purposes of the federation, as stated by its president, Samuel Gompers, in his sworn testimony before your committee, are and have been as follows:

"To relieve the workers—the working people—from burdensome long hours of toil; to protect them in their work, their lives, their health; to improve their material and social and moral and political standing; to bring about a better condition for the toilers of our country as the result, and as a reward for the services they render to society."

The funds received and expended by the A. F. L. amount now to more than $200,000 per annum. This is paid by the individual members of the various organizations composing the federation, the assessment being now about 9 cents per individual per annum. It should be noted just here that the moneys which have been expended by the federation in political activities—that is, in such efforts as it has made in elections, which will be hereinafter more specifically set forth—have not come from those funds above referred to, but have been received by voluntary contributions from various members. Complete reports of all funds received and expended for all purposes have been published in the official organ of the federation and have been placed in evidence before the committee.

At page 2423 of the committee hearings will be found a statement of the receipts and expenditures from 1881 to 1912, inclusive. The receipts during that time aggregate $2,638,042.41, the expenses $2,518,568.48, leaving a balance on hand September 30, 1912, of $119,473.93. This was the general fund collected in the way of dues from the membership.

The association publishes a magazine known as the American Federationist and also publishes a weekly news-letter, giving a résumé of all matters of particular interest to the federation. These are widely circulated and are public publications. In addition, it publishes many pamphlets and circulars covering a variety of themes of interest to its members and to the public generally.

The president of the association is Samuel Gompers, who has served in this capacity for a long period of time; he receives a salary of $5,000 per annum. The secretary is Frank Morrison, who receives a salary of $4,000 per annum. The organization has an executive committee, headed by its president, to which is committed general management of the federation's affairs. It has also a legislative committee charged with the duty of looking after legislative matters in which it is interested. Its headquarters are located in the city of Washington, where it has a very considerable office force.

DISTRICT OF COLUMBIA ORGANIZATIONS.

The development of the investigation led your committee into an inquiry concerning the activities of certain organizations and persons interested in legislation affecting the District of Columbia solely, and herein we first note the local associations of dealers in intoxicating liquors.

There are in the District of Columbia a number of organizations composed of those engaged in the different branches of liquor and beer manufacturing and dealing, and related businesses. These several organizations are as follows: First, bottlers; second, brewers; third, jobbers; fourth, salesmen; fifth, wholesale dealers; and sixth, retail dealers. Each of these organizations is made up of individuals engaged in the particular business indicated by the name of the association. These individuals pay into their respective organizations certain monthly or annual dues.

The associations above named are federated into a central body, and they as associations maintain and finance it. A Mr. Muhleisen is president of the central organization, Mr. Hugh F. Harvey is secretary, and a Mr. Jacobson is the treasurer.

After the introduction in the Sixty-second Congress of what is commonly referred to as the Jones-Works bill these several associations took a very considerable interest in that proposed legislation. An attorney was employed, who appeared before the Senate Committee on the District of Columbia to argue as to the merits, and numerous other persons appeared voluntarily and without compensation. There were also other activities, such as the distribution of briefs and arguments. Also, this District organization communicated with men in the liquor business in all parts of the country to try to get them to interest the Representatives in Congress from their districts. Mr. Harvey testifies upon this point:

"All we asked them to do, of course, was this moral influence they could bring to bear through communication with their Representatives, pointing out to them from our viewpoint the effects of this legislation."

There was also a certain degree of interest felt by the organization in what is commonly known as the Webb bill, affecting interstate liquor shipments, but this interest seems to have been very small, and there are no evidences presented of any real activity on the part of these local organizations upon this latter measure. The amount of funds raised by these several organizations does not clearly appear from the testimony adduced before your committee. The principal witness heard was Mr. Hugh F. Harvey, a retail liquor dealer of the city, who was formerly a president of the Federation of Liquor Dealers of the District of Columbia, which is the retail liquor dealers' association, and who is now a member of its executive board. According to his testimony this particular federation has a membership which ranges from 200 to 300 individuals. These pay dues of $2.50 a month, that is, $30 per year, which makes its income from $6,000 to $9,000 per annum. The secretary and treasurer are salaried officers, but the amount of their salaries does not clearly appear. The organization has existed for a long number of years and has a number of interests other than in questions of legislation. However, it clearly appears that during the pendency of the bill referred to a very considerable fund was raised in addition to the amount received by annual dues, the retail dealers' organization alone being assessed $10 per capita. This additional fund so raised was utilized largely in paying the expenses of the attorney for appearing before the Senate committee and for the printing and distribution of the briefs and arguments referred to.

THE "LOAN-SHARKS" AND THE PAWNBROKERS.

During several past Congresses there have been introduced various bills commonly known as "loan-shark" bills designed to prevent the charging of exorbitant rates of interest by persons lending money and taking chattel mortgages as security, and certain classes of note discounters. In 1911, about the beginning of the extraordinary session of the Sixty-second Congress, such a bill was presented by Representative Dyer of Missouri, and was referred to the House Committee on the District of Columbia. After being for several weeks considered by that committee it was amended so as to include within its provisions that class of money lenders known as pawnbrokers, and as amended was favorably reported to the House and passed. Subsequently the bill passed the Senate with certain amendments, one of which was a striking out of the provision including the pawnbrokers. Being sent to a conference committee of the House and Senate, it was there considered and finally agreed upon, the pawnbroker provision being restored, and near the close of the last session of the Sixty-second Congress, in February, 1913, was passed, signed by the President, and became a law.

It being suggested before your committee that funds had been raised and efforts made to improperly influence the defeat of this legislation, certain of the money lenders and pawnbrokers alleged to have been the most prominent in the matter were summoned to appear and their testimony was taken.

The principal character in this activity was one George D. Horning, who was both a loan shark and a pawnbroker. Two other pawnbrokers examined were Isaac Heidenheimer and Abraham Burnstine. All of these were reluctant and unwilling witnesses. It was with the greatest difficulty that they could be brought to relate the most simple facts, and their manner and appearance while testifying were such as to create a distinctly unpleasant and unfavorable impression upon the committee. After a number of hours of difficult examination, however, your committee finally elicited the following information:

Very shortly after the introduction of the Dyer bill, it being believed that it would receive serious attention in so far as it applied to those commonly classed as loan sharks, Mr. George D. Horning proceeded to endeavor to raise a fund for the purpose

of defeating this legislation, if possible, and he did succeed in raising at least $8,000. Those contributing, in so far as Horning could remember the names, or was willing to give them, were: J. S. Masters, $750 to $800; A. Kase, $700 to $800; William Bishop, $1,000; a Mr. Watt, who is a citizen of Philadelphia and engaged in business there, but had interests in the loan business in Washington, $2,000; a Mr. Wall of Chicago, who was in the same situation as Mr. Watt, $2,000; and Mr. Horning himself gave from $1,200 to $1,500.

Out of this fund there was paid to Mr. Henry E. Davis, an attorney of this city, the sum of $2,000, according to his testimony and that of Horning. It appears to have been paid as a retainer to him to conduct the fight against this legislation, but, according to his own testimony, he rendered practically no service in this connection. It is claimed by Horning that he has paid about $500 out of this fund for attorneys' fees since the passage of the bill to lawyers who are representing him in litigation over the matter, and he claims that he has from $5,000 to $5,500 of the sum so collected in a private box in his safe; that it has never been deposited in any bank, although his testimony discloses that he carried accounts in several banks, and that he has kept it in his private safe separate and apart from all other funds ever since its collection, and that he is now holding it in this way. He states that he proposes to fight the legislation and use this money for that purpose. On page 809 of the record he was asked:

"The CHAIRMAN. I understand it (the $5,500) is in the box all right, but what are you holding it for? What do you intend to do with it?

"Mr. HORNING. Oh, I am going to fight this legislation. I am not going to stop. I am going to keep right along on it. I have got it for that purpose, and if I fail on this I am going to introduce another bill. I am not going to stop now until I know positively this bill is unconstitutional. I have always told you I felt I have not been treated fairly, and I am going to try to save my business if I can."

Horning claims that he keeps no books and that he has no written record whatever of this transaction.

It should be borne in mind that the $8,000 above mentioned was collected from those engaged in the loan-shark business, and that at the time it was raised by Horning the loan sharks alone were involved in the proposed bill, the pawnbrokers being not then included.

After the bill had been amended by the House so as to include the pawnbrokers, Mr. Horning seems to have begun work among those engaged in this business with a view of trying to raise $10,000 for the purpose of defeating this part of the legislation. He called on nearly all the pawnbrokers of the city but, according to the testimony adduced before your committee, only succeeded in getting two out of a possible nine or ten to join him in making contributions; these were Burnstine and Heidenheimer.

The evidence as to the amount raised by these three men to be used in connection with this legislation, and the manner in which it was expended, is by no means clear or satisfactory. There seemed a manifest desire to evade the inquiry in this regard, and it was with the greatest difficulty that your committee extracted sufficient testimony to obtain an intelligent impression. The evidence obtained shows, as best the committee can determine, that the fund raised by the three men mentioned amounted to $3,734.36. Of this Horning and Heidenheimer paid 40 per cent each and Burnstine paid 20 per cent. Horning seems to have had general charge of the expenditure of this fund. No books were kept, and payments among themselves were made sometimes in cash and sometimes by check.

The nearest approach to clearness as to how the fund was expended is in the testimony of Horning. At page 770 of the hearings he undertakes to state how it was distributed. According to his statement there was paid to Mr. Henry E. Davis, an attorney of the city of Washington, the sum of $2,000 for services rendered in discussing or attempting to discuss this pawnbroker legislation with certain of the conferees and with Senators and Representatives and for appearing before the President to argue the alleged injustice of the bill. There was paid to the law firm of Tucker, Kenyon & McFarland, also of Washington, the sum of $350 for services in preparing a brief and for an opinion at some time rendered on the bill. To a man named William Hart there was paid $200 or $250, a Mr. Sullivan received $200, and a Mr. Schulteis $300. These latter three individuals seem to have been employed to discuss this legislation with Members of Congress and present the views of the pawnbrokers to such of said Members as they should see personally. From the testimony before your committee it does not appear whether these men actually did anything they were employed to do.

The bills for printing briefs, letters, and other matter filed by Heidenheimer, and which he paid, aggregate $67.86, and Horning estimates that the total for printing and distribution approximated $100. The latter also swears that out of this fund so raised he contributed the sum of $500 to the Democratic national campaign committee, pay-

ing the same to John Costello, the national committeeman for the District of Columbia. There was filed with your committee and copied into the record, where it appears at page 778, a receipt signed by the national chairman of the Democratic committee, executed to George D. Horning, for the sum of $825, as a contribution to the campaign fund. So far as the receipt shows this was a personal contribution of Horning, but he states that $500 of this amount was from the fund above referred to. Burnstine had no knowledge of this contribution being made at the time, and the testimony of both Horning and Heidenheimer is hazy and indefinite as to when the latter actually learned of it. Upon the whole, however, your committee is of the opinion that he knew of it at the time and sanctioned it, issuing his check on October 31, 1912, for his pro rata of $200 with full knowledge of the purpose for which it was to be used. There is no evidence that those receiving the contribution had any intimation of its being other than a personal contribution of Horning. The natural presumption is that this contribution was made in the hope that it might in some way influence the legislation which was then pending. A fair construction of the evasive testimony of Heidenheimer and of the declarations of Horning made the impression upon the committee that such was their hope, but there is no evidence of any promise being made them from any source whatsoever, and as a fact of history the bill very shortly thereafter passed and was written into law.

Concerning the payment of $2,000 to Mr. Henry E. Davis, there was some controversy, and some doubt apparently exists. Heidenheimer seemed to believe that his fee was $1,500. Mr. Davis himself testified before the committee that this sum of $2,000 was paid him and that on February 26, 1913, when the last payment was made he executed a receipt therefor. This paper was placed in evidence before the committee. He further testified that after being paid he returned $500 to Horning with which to pay one Ryan for services alleged to have been performed by him in connection with the matter, similar, as your committee understands, to those of Hart, Sullivan, and Schulteis. He states that he did this voluntarily, it being suggested to him by Horning that Heidenheimer and Burnstine were unwilling to pay more, and that he (Horning) would have to pay Ryan's entire fee. Horning had been for many years a client of Davis, and under the circumstances, he says, he felt inclined to, and did, pay the same himself.

There was considerable question in the committee as to the fact of this alleged payment to Mr. Davis, but it does not appear to be material to the inquiry, since it can not in any way affect its findings upon those matters coming within the scope of the resolution, and hence no opinion is here expressed upon it.

Having described the various organizations, associations, etc., concerning which investigation was made, the specific matters which the committee was directed to inquire into and report upon will be now discussed. It is proper to state that in the preparation and rendition of this report it has been determined to follow a different order of statement than that laid down in the resolution. It will be observed that in the preamble of the resolution the only organization referred to is the National Association of Manufacturers, while in its body an inquiry is directed into the activities of any and all organizations, persons, associations, etc., that the committee might learn to be engaged in the efforts therein defined and described. By taking up the resolution in reverse order it seems possible to arrange a more logical and succinct report. Accordingly, the fourth paragraph will be first considered. This directs the committee to inquire, first, whether the National Association of Manufacturers or any other organization, etc., does now maintain or has heretofore maintained a lobby for the purpose of influencing legislation by Congress.

LEGISLATIVE ACTIVITIES OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND OF THE NATIONAL COUNCIL FOR INDUSTRIAL DEFENSE.

(5) Your committee will not undertake to discuss in this report the legislative activities and methods of all of the organizations and associations referred to further than to call your attention to the facts reported by the select committee and to their exhaustive review of the same, but we feel it a duty we owe to the House and to the country to call particular and special attention to the methods, practices, an insidious lobby activities of the National Association of Manufacturers and the National Council for Industrial Defense. The National Association of Manufacturers is a corporation organized

under the laws of the State of New York. The National Council for Industrial Defense is an association whose purposes are vaguely defined. These two associations are represented in part by the same persons and are acting in harmony and are operating apparently for a common purpose. The facts relative to these particular organizations can not be better stated than as set out in the following extract from the report of the select committee:

LEGISLATIVE ACTIVITIES AND METHODS OF THE N. A. M. AND THE N. C. I. D.

There has heretofore been given a history of the organization and a general statement of the purposes of the N. A. M. and the N. C. I. D., and their unity of intention as to political and legislative matters has been set forth.

As a rule the attitude of these organizations on legislative matters has been negative—that is to say, they have opposed with all the vigor possible certain legislative propositions:

(1) That limiting the right of workmen to contract as to the amount of time they shall labor.

(2) Any limitation upon the power of courts of equity to issue the writ of injunction.

(3) The exclusion of organized labor from the provisions of the Sherman law.

These three matters have engaged their most serious attention and have been the subjects of their most active opposition. All bills and amendments—and there have been too many to try to enumerate them here—seeking to accomplish either of these ends, or even looking in that direction, have been met at the threshold and have been fought with untiring persistency and unwavering earnestness.

Other matters in which from time to time they have taken an interest have been workmen's compensation legislation, industrial and vocational education, merchant-marine legislation, and the creation of a tariff commission, all of which one or both of the organizations have favored. They have also opposed all legislation looking toward the permitting of "unionization" of Government employees, and seem to have been adverse to the principle involved in bills proposing to restrict or prevent the transportation in interstate commerce of articles that are the product of child labor. The question of Federal incorporation has been also a subject matter of discussion, but the record discloses no particular effort relative to either of the latter subjects.

To a certain extent also the N. A. M. seems, through its employee, Mr. Mulhall, to have taken some interest, a few years ago, in behalf of what was known as antipilotage legislation. This interest appears, however, to have been rather tepid. Employers' liability legislation has also received a very considerable degree of attention and elicited great interest at different periods on their part.

The principal figures representing these organizations, who have been active in Washington concerning legislative matters, are Marshall Cushing, James A. Emery, and Martin M. Mulhall.

CUSHING.

Marshall Cushing was secretary of the association for a period of several years, retiring in 1907. Because of the remoteness of the time of his service your committee has not made so searching inquiry of his activities and efforts as of the others. The testimony shows that he was secretive and reticent to an extreme degree, as to the character of his work, and it was evidently friction in the association caused by this that led to the severance of his connection with the organization, which occurred not long before the launching of the N. C. I. D.

EMERY.

James A. Emery became counsel for the N. C. I. D. in the year 1908 and has served in that capacity since that time, having his headquarters in the city of Washington.

The constituent members of this organization at the time of joining, sign a card—something in the nature of a power of attorney—authorizing the counsel to represent them in those legislative matters in which an interest is taken by them, and he has complete authority in the premises to act and speak for them before committees of Congress and other persons and authorities thought necessary to be communicated with.

The activities of Mr. Emery in his capacity as counsel have been many and varied. When bills are introduced he procures copies, makes abstracts of them, prepares briefs and arguments upon them, keeps the members of his organization advised as to the contents and status of such bills by means of bulletins, letters, pamphlets, etc., answers any special inquiries that may be directed or referred to him concerning such bills or in regard to existing law, seeks opportunities for making arguments before the committees having such bills in charge, and makes such arguments whenever opportunity is afforded. It also appears that by keeping constantly informed as to the status of bills in committees and upon the calendars he is able to and does advise the members of his organization when and how to address Representatives and Senators by letter or telegram urging action or nonaction, as may be desired by such members.

MULHALL.

Martin M. Mulhall entered the employ of the N. A. M. about the 1st of January, 1903, and continued in its service until the close of the year 1911—a period of 10 years.

In September, 1911, he was suspended by the general manager, Mr. Bird, and subsequently was removed by the board of directors or resigned, his retirement to take effect at the close of the year.

Following his retirement he offered, in the latter part of 1911, to turn over his letters and correspondence to the American Federation of Labor and also sought to bring them to the attention of Congress through the then chairman of the Committee on Labor, Mr. William B. Wilson. These offers were not accepted, and in 1913 he endeavored to bring the matter to the attention of William Randolph Hearst, owner and publisher of various newspapers and magazines. It does not appear that he sought any compensation in connection with these offers.

After these negotiations had failed, the correspondence was finally brought to the attention of the New York World, and arrangements were made whereby, for the sum of $10,000, the correspondence was turned over to that journal, and the personal narrative which appeared in the World and the Chicago Tribune on June 29, 1913, was written.

Since the appearance of this article and its companion piece, the summary prepared by Mr. Siebold, Mr. Mulhall has been variously and vigorously assailed.

Your committee has not felt called upon to enter upon either his personal condemnation or his personal defense. It has concerned itself wholly with an inquiry to ascertain the facts called for by the resolution committed to its charge. The fullest and freest opportunity was given to those interested to cross-examine Mr. Mulhall upon any and all parts of his personal narrative appearing in the journals referred to and upon the matters contained in his correspondence, the members of the committee themselves first asking such questions as they deemed proper under the resolution. He was given a very rigid cross-examination by Mr. James S. Easby-Smith, counsel for Representative James T. McDermott, and by Mr. Robert H. McCarter, who appeared as attorney for the N. A. M. and the N. C. I. D.

In his examination Mr. Mulhall admitted that he had been in error in sundry statements appearing in his personal narrative as published in the World and Tribune and as to matters contained or asserted in his correspondence. Some of these matters were vital and important; others were wholly immaterial.

Upon many other matters of great importance Mr. Mulhall has been abundantly corroborated by the testimony of officials of the N. A. M. and N. C. I. D. and other witnesses and evidence brought before the committee, while also many of his statements and much of his testimony has been sharply and flatly contradicted.

It is of vital necessity that the proper perspective be obtained and maintained. What Mr. Mulhall actually did in the matter of reaching and influencing Members of Congress is important as relating to their integrity and hence the integrity and purity of representative government. Of almost equal importance, in another aspect, is what the organizations employing him thought he was doing.

These organizations are strong and powerful; their ramifications are multifarious; the reach of their influence is indeterminable. When we trace the membership back to the actual individual persons who compose it, we find them earnest, honest, representative citizens engaged in the great and masterful work of the world, seeking with patriotism and honesty to do the work of real men in the affairs of life. The great mass of individual members, doubtless, have not known the details, perhaps few of them have had even general information as to the particular things Mulhall was doing or was thought to be doing. They delegated details to their chosen officials. Without knowledge they could not be held morally responsible for his acts. Nevertheless, because of the potency and magnitude of these associations, the ideals and mental attitude of those charged with the conduct of their affairs becomes highly

important. What was their attitude toward the Congress? What was their estimate of its intelligence and of its virtue?

That Mr. Mulhall was extravagant in many of his claims, that he purposely or through self-deception overestimated, and consequently in his reports overstated, his potency and influence with Members of Congress and public men generally, your committee thinks admits of no question; that he entertained an animus toward many of those against whom he made allegations is indisputable; that he used the names of some public men in connections and with a freedom not justified by any fact developed or existing is undeniably true. Nevertheless, however gratifying this may be to those citizens who like to have faith in public men, it does not, if his acts, actual and alleged, were improper, exculpate the responsible authorities of those associations who employed him. They believed he was doing the things he reported himself to be doing and employed him because they did believe it. Their mental attitude is thus most forcibly disclosed. Mr. Mulhall, as we have stated, served the N. A. M. through a period of approximately 10 years, under different régimes and different officials. He made elaborate reports, many of them in duplicate and triplicate. He received a salary and an allowance for expenses, both of which were paid during all these years without question, except in perhaps one minor instance as to a small typewriting account, so far as the record discloses. That there was some friction at times because of his temper appears, but this was always smoothed over until the time of his suspension in 1911, and upon the whole he undoubtedly enjoyed the confidence, esteem, and appreciation of the officials who were his superiors, and his acts, with few exceptions, met their approval and received their commendations.

One exception which it seems proper to note at this juncture is the use by him of a room in the Capitol. In the Mulhall narrative appearing in the press, and in the comments concerning it, much stress was laid upon this fact. Hereinafter this will be more fully discussed. For the present it is sufficient to say that the use of this room by him was explicitly disapproved by that official of the N. A. M., Mr. Bird, under whose direction he was working, and positive instructions were given him not to use it. His subsequent use of the room was in violation of these instructions and seems to have been without the knowledge of Mr. Bird, Mr. Emery, or other of the officials of either organization. This protest was not against what he was to do in the room, but was simply against its use by him, it evidently being feared that such action would meet merited public suspicion and criticism.

Under all the circumstances and conditions it seems fair and just to say that the N. A. M. and the N. C. D. I. by now assailing and denouncing Mulhall and by proving or attempting to prove that he did not do many of the things which at the time he reported he was doing can not escape whatever criticism and condemnation may be deserved for his alleged acts as their agent, because, whether he did or did not do the things which he reported to them he was doing, they thought he was reporting the truth and, with few minor exceptions, approved his course unreservedly.

The exact duties that Mr. Mulhall was supposed and expected to perform your committee confesses proved difficult of ascertainment.

As has been stated, he was first employed by Marshall Cushing about the beginning of 1903. During the Cushing régime he was known as No. 11 and not by name. Just why this plan was adopted does not appear, except that it was in line with the policy of secretiveness practiced by that individual while acting for the N. A. M. After the election of Mr. J. W. Van Cleave as president and the retirement of Cushing as secretary this numbering practice was abolished. Mulhall was continued in the employ, however, charged with the same duties and performing the same functions as theretofore. In fact, his duties were at all times the same, as have been the purposes and policies of the N. A. M. His work is commonly referred to by himself and the officials of the organization as that of a "field agent." Your committee was somewhat puzzled to know just what this meant and confesses now that the subject has not been wholly illumined. It clearly appears, however, that among other things he did or was expected to do in his capacity as "field agent"—and this is to be distinguished from his activity in the city of Washington—was political work in different States and congressional districts. This will be hereinafter more especially referred to. Also, he was sent at times into sections where strikes were in progress, evidently for the purpose of trying to break them. Your committee has not felt called upon or authorized under the resolution to investigate his efforts in this respect.

He appears also to have solicited members for the association to some extent but this seems to have been a minor and merely incidental part of his business.

President J. W. Van Cleave unquestionably entertained a high regard for his abilities, was responsible for his salary being increased, and evidently held him in esteem, and between him and Ferdinand S. Schwedtman, secretary to Van Cleave, who carried on

the greater portion of the latter's correspondence as president, there seems to have existed a deep and mutual friendship and admiration. He was constantly complimented and encouraged by Mr. Schwedtman, who assured him also of his chief's appreciation.

Some time after the formation of the N. C. I. D. Mulhall was "loaned" to the latter by the N. A. M., instructed to come to Washington, and was placed while here under the direction and control of Mr. Emery. While away from Washington, engaged in field work, he was to be under the direction of Mr. Bird. The services which he rendered the N. C. I. D. were considered by the N. A. M. as its contribution to the former organization.

There is an unsatisfactory indefiniteness also about the functions he was to perform in Washington. He was at this time receiving a salary of from $250 to $300 per month and a not illiberal allowance for expenses. The latter was not a fixed amount. He sent in his expense accounts and they were paid without question, except in the instance cited.

One of his duties seems to have been that of procuring bills, reports, etc., but the most of this work was, during much of the time at least, performed by I. H. McMichael, who was employed by Mulhall for that purpose with Mr. Emery's consent, Mr. Emery paying him at least in part.

He did not appear before any committees of Congress to make arguments upon pending measures, nor does it appear that he had anything to do with the preparation of the bulletins and pamphlets sent out by Mr. Emery.

From the testimony adduced before your committee, the conclusion must be inevitable that in so far as Mr. Mulhall's duties in Washington and about the Capitol are concerned he was employed and used by these organizations very largely and primarily for personal lobbying. They believed him to be a man of extended acquaintance among Representatives, Senators, and other public men, and believed that this acquaintance could be capitalized and utilized in influencing individual Members in their official acts, and so affect the general course of legislation; and it was for this purpose that he was employed and retained.

Having pointed out the legislation in which the organizations were interested, we turn now to the methods, and especially to Mulhall's work, in this regard.

In his personal narrative in the World and Tribune he asserted that he would obtain advance information as to legislation that was to be offered by way of amendment as riders upon bills; that upon one occasion he reported to Mr. John Dwight, the Republican whip of the House, that a rider would be offered to the sundry civil bill two weeks before it was offered, and that Dwight kept in Washington as many Members of his side of the House as he possibly could, etc. He states that this rider was "a general eight-hour bill, which William Hughes of the sixth New Jersey district, put upon the sundry civil bill, and this rider was squarely defeated by a party vote of the House, the Republicans voting against it and the Democrats voting for it."

Concerning this statement there has been much testimony and a very considerable amount of confusion. We think the article was so worded as to make the impression that the obtaining of such information was a common practice and a matter of frequent occurrence. The evidence does not substantiate this idea, but that upon one occasion, which was that referred to by Mr. Mulhall, he did obtain such information is clearly and unmistakably proven. It does not appear, however, that he obtained this information two weeks in advance of the amendment being offered, but apparently it was some two or three days, nor was the amendment offered by Mr. Hughes of New Jersey, but, as the record shows, it was by Mr. Kendall of Iowa.

Mr. Mulhall is also mistaken as to it having been defeated by a party vote, "the Republicans voting for it and the Democrats voting against it." As a matter of fact, a point of order was made to the amendment, and it was sustained by the chairman of the Committee of the Whole. An appeal from this ruling was taken, and the Chair was sustained upon a teller vote—yeas 99, nays 61. There is no method of ascertaining whether this vote was along party lines, nor do we deem it material. It is very well known in the House and throughout the country that divisions upon these questions have not been uniformly along party lines.

In a letter written to Mr. John Kirby, jr., of Dayton, Ohio, under date of June 4, 1910, Mr. Mulhall makes a long report as to his activities. This letter has been placed in evidence before your committee. It appears from the context that upon June 3 Mr. Mulhall went to the Capitol and—

"received a brief report from my labor friends and was handed the following written statement:

"'The sundry civil bill now before the House, page 116, at the end of bill, on page 184—Mr. Hughes, of New Jersey, has an amendment on the eight-hour law to be offered; every effort is being made to get your men in so that the amendment can be defeated.

Notice has been given all Republicans to be on hand to vote with the chairman, Tawney, against same going into the bill. I will look after the end of keeping the other side away.'"

Mulhall testifies that this note was handed him by I. H. McMichael, at that time a chief page in the House and in the employ of Mulhall for the N. A. M.

McMichael testifies that he did about that time hand Mulhall a note, but he is quite positive in the belief that not all of the language above quoted was written thereon. He believes he wrote only the following:

"The sundry civil bill now before the House, page 116, at the end of the bill on page 184, Mr. Hughes of New Jersey has an amendment on the eight-hour law to be offered."

McMichael states that he met Mulhall in the corridor and was asked by him what was going on, and McMichael thereupon gave him this information; that Mulhall requested him to write it and he accordingly did so.

The original of this note was not placed in evidence. When Mr. Mulhall was before your committee he was questioned concerning it, and it was his impression that it had been filed before the Senate lobby investigating committee. We thereupon addressed a request to the Senate committee to be permitted to examine this, if the original had been filed, and in response thereto were advised that it had not been placed in evidence or presented to the committee. From all the evidence and the surrounding circumstances your committee thinks it probable that McMichael's version is correct, and that the other portions of the note became mixed with the original McMichael matter in quoting the same.

The letter of Mr. Mulhall continues, giving an account of his call upon the Republican whip of the House and informing him that such an amendment would be offered, and tells his (Mulhall's) efforts to procure the attendance of Members adverse to the legislation when this matter should arise.

It appears from an examination of the sundry civil bill, as it was reported to the House in the Sixty-first Congress, second session, that it did consist of 184 pages. It also appears from an examination of the Congressional Record (see pt. 7, vol. 45, 61st Cong., 2d sess., p. 7327) that at the close of the session, on June 2, page 116 of the bill was under consideration. It will be remembered that Mr. Mulhall claims to have obtained this note on the morning of June 3 and prior to the meeting of the House. It further appears that the amendment of Mr. Kendall was proposed on page 184 and before the last section of the bill—section 11. (Pt. 7, vol. 45, p. 7410.)

This record evidence is necessarily strongly corroborative of certain of the details of Mr. Mulhall's letter, and, in addition to this, the testimony of Mr. Emery is conclusive upon that point.

Under date of June 6, 1910, Mr. Emery, writing to Mr. Kirby, gave an account of the contest over the Kendall amendment, saying among other things:

"In accordance with the warning received, an account of which was given you in my recent letter, an attempt was made by the Democrats to attach the 8-hour bill to the sundry civil bill on Saturday afternoon. The colonel's authentic advance information enabled ample warning to be given to the Republican whip, and the prompt and efficient assistance which the colonel gave secured every precaution."

The "colonel" therein referred to was Mr. Mulhall.

In a subsequent part of the letter it is further stated:

"The colonel deserves the greatest credit in the manner of obtaining his information and the promptness and efficiency with which he applied it."

Another of the matters of legislation against which these organizations have made vigorous and determined warfare has been the exemption of labor unions from the operation of the Sherman antitrust law, and in connection with this same sundry civil bill in 1910 there was a contest over this in which Messrs. Emery and Mulhall took a most active part.

On June 2, 1910, while the sundry civil appropriation bill was under consideration in the House (see Cong. Rec., vol. 45, pt. 7, 61st Cong., 2d sess., p. 7324), Representative William Hughes, of New Jersey, offered an amendment designed to prevent the use of any portion of a special fund allotted the Department of Justice for the investigation and prosecution of violations of the antitrust law being used for prosecuting members of labor unions under certain conditions. This amendment was offered to be inserted at the end of line 24, page 116 of the bill.

We think it strongly probable that Mulhall, in writing his personal narrative, confused the Kendall amendment, above referred to, with this Hughes amendment, and hence some of the inaccuracies that appeared in his statement.

The Hughes amendment was adopted in the Committee of the Whole. No separate vote was had or demanded upon it at the time of the final passage of the bill by the House on June 4, 1910. The Senate, however, amended the bill by striking out the

House amendment, and this action became Senate amendment No. 76. When the bill as amended by the Senate was returned to the House all Senate amendments were disagreed to by unanimous consent and the bill was sent to conference. There were a number of conference reports, partial in character, made from time to time and acted upon. On June 21 (Rec., 61st Cong., 2d sess., vol. 45, pt. 8, p. 8656) Mr. Hughes moved that the House conferees be instructed to disagree to Senate amendment No. 76. Upon this motion there was a call of the roll and the yeas were 154; nays, 105; answered present, 12; not voting, 118.

The next and final test came on June 23, 1910 (Rec., vol. 45, pt. 8, p. 8852, 61st Cong., 2d sess.), when Mr. Tawney moved that the House recede from its disagreement and concur in the Senate amendment striking the provision from the bill. This motion carried upon the roll call—yeas, 138; nays, 130; present, 16; and not voting, 105.

There has been placed in the record of your committee, and proven, a letter of Mr. James A. Emery written to Mr. John Kirby, jr. (House hearings, p. 2118), in which there is given an account of the contest in the House, his own actions in regard thereto, and the work performed by Mulhall. Among other things he says:

"In the meantime, after an hour's conference with Mr. Dwight, the whip of the House, at his office, the program was outlined and carried out to the letter. To the colonel (Mulhall) was given a list of 14 names, some Democrats, some Republicans, who voted with Hughes. He accomplished his work so successfully that of the 14 but one failed to either absent himself or vote with us yesterday."

In view of this statement, your committee has carefully examined the Record upon the two votes. This shows (see volume of Record referred to ante) that there were 15 Members that are not recorded in the vote of June 21 who voted for the Hughes amendment on June 23; that there were 30 that voted for the amendment on June 21 who are recorded as not voting on June 23; 6 that voted for it on June 21 who answered "present" on June 23, being paired; and 3 that voted for it on June 21 who voted to recede—that is, against it—on June 23.

Most or all of those recorded as not voting on both days were paired, and as, of course, your committee has no way of determining who of them were absent from the city or engaged at the time in other official business, it has been deemed essential to recite the Record facts in view of the statement in Mr. Emery's letter to as Mr. Mulhall's efficiency in the contest.

We have set forth the above instances with considerable detail, because they appear to be typical of the mental attitude and purposes of the N. A. M. and the N. C. I. D.

Other methods pursued by them have been to appear, by representatives, before committees and make arguments, to address written and printed communications to Members of Congress, and one favorite plan has been, when it is known that an issue was shortly to come to a vote, to have members of the organizations in all parts of the country telegraph their immediate Representative or their Senator, as the case might be, urging him to vote in a certain manner. The thorough organization of these bodies enables their agents in Washington to speedily inform the membership in the various States of a pending matter and bring quick responses by way of telegraphic appeals to Congressmen.

The second clause of paragraph 4 of the resolution requires the committee to "ascertain and report to what extent and in what manner, if at all, legislation has been improperly effected or prevented by reason of the existence of such lobby if it be found to exist now or to have existed heretofore."

This necessitates the expression of the judgment of the committee as to what character of efforts may properly be exercised by an individual or an association in the attempt to influence the action of Congress and its individual Members in legislation. The committee realizes the extreme delicacy and difficulty of laying down such a rule and the practical impossibility of asserting one sufficiently specific to be generally satisfying. This is a matter of individual opinion and is a question which must largely be determined by the Member for himself. After all the searching and defining and speculating, we come back to the elemental proposition that the whole matter must depend ultimately upon the judgment, the intelligence, the honor, and above all, perhaps, the courage of the individual Congressman.

No rule which this committee can lay down, even if it could be crystallized into law, will protect a fool from his folly or a weak man from his timidity, nor can it give courage to the cowardly or virtue to the depraved. The man who enters public life in a representative government assumes grave responsibilities, and most largely upon his own judgment, his own firmness of will, and his own sense of honor must he rely in meeting the constant pressure from conflicting interests that are ever pleading and appealing, ever enticing and threatening him.

Each appeal and each threat and each inducement offers its own problem to be solved, and each man must have a standard of his own.

The elements which may annoy one may offer no obstacles to another. We see things from different angles, and, so seeing them, their appearances are different.

Nevertheless, your committee believes that there is a general standard in the public conscience of this country which renders it possible and proper to lay down a general rule upon this matter, and this we venture to state, realizing that it is general and must be applied under the limitations and conditions which the exigency of each question that arises may present.

Your committee is of the opinion that any individual or any association of individuals interested in legislation pending in Congress has the unquestionable right to appear in person or through agents or attorneys before committees and present his or its views upon and arguments in behalf of or against such legislation; that it is the right of the individual and the mass to appeal to the legislator personally, verbally, if he sees proper to grant an interview, or in writing, if he sees proper to read it, and by education and argument seek to convince his judgment and his conscience. This we think is the true spirit of the right of petition guaranteed by the Constitution to the citizens of the Republic. To place the Congressman in a cloister to legislate, rendering him immune to extraneous influences, would be impossible, and, if possible, it would be exceedingly ridiculous. But your committee feels assured that whenever any person or association attempts by secret or insidious means or methods, by either giving or encouraging the hope of other reward than that mental and spiritual exaltation which springs from the consciousness of having walked in the light of honest judgment and followed it to its logical end, or by threats of punishment to be vindictively inflicted, then such methods become a menace to the free exercise of the legislator's judgment and the true performance of his solemn obligation and duty, are improper and merit the severest condemnation.

When we come to apply this rule to the activities of the N. A. M. and the N. C. I. D. in legislative matters we are at once confronted with the impossibility of divining the motives which actuated the attitude of the various Members of Congress.

Accepting as true the statement that upon the final vote on the Hughes amendment Members were induced to change position by the acts of Mulhall and Emery and the influence of telegrams and letters, the question still remains as to what were those acts and what methods were used. In the very nature of things the committee could not ascertain these facts in detail or learn the motives of those who changed. As to the inducing of Members to remain away, which is also stated to have been done, the committee has no hesitation in saying that this was highly improper. The Members so induced violated the rules of the House which require attendance and the casting of a vote unless excused by the House and, what is more important, violated the obligations due their constituencies and the public.

This we say without reference to the merits of the legislation concerning which differences of opinion exist.

To this extent, at least, the lobby of the associations was guilty, in the opinion of your committee, of improperly preventing and seeking to prevent this legislation.

For the reason that it is impossible for your committee to know the motives of those who changed their position, it is impossible to say whether they were improperly influenced; but we feel constrained to say that there is a limit beyond which men should not in decency go, even in argument, and we entertain the gravest doubt as to the propriety of the acts of Mulhall and Emery relative to this matter, and we hope that future Congresses may be trusted to legislate without the particular kind of aid rendered in the particular manner that those gentlemen then gave.

We think it is offensive and outrageous that these associations should have their paid hirelings about this Capitol buttonholing Members of Congress, striving to induce them to remain away from the Chamber when a vote was being taken. We think they went beyond the limits of legitimate effort and that they deserve the severest censure as well as a pointed invitation and suggestion that they completely reform their methods or else remain away in the future. We have striven to make clear our opinion as to the right of persons and organizations to argue and appeal to Representatives and Senators. We would not place one of these upon an unapproachable pedestal and bid the world regard him with awe and in silence. That is not the true theory of representative government; but the Congressman himself is entitled, and what is vastly more important, the public whom he represents is entitled to have him act free from the annoyances and efforts such as clearly were incident to these activities of Mulhall and Emery, whose conduct met the unreserved approval and enthusiastic acclamation of the officials of their respective organizations.

EFFORTS AS TO COMMITTEE ASSIGNMENTS.

In the third paragraph of the resolution your committee was directed to inquire whether improper influence has been exerted by said association (the N. A. M.) or by any other association, corporation, or person to secure or prevent the appointment or selection of any Representative to any committee of the House in this or any other Congress.

In the Mulhall article it was asserted that at the request of Mr. Emery and Mr. Mulhall three active members of the House Judiciary Committee were removed through the influence of Hon. James E. Watson; that one of these was Mr. George A. Pearre, late a Representative from the State of Maryland, the names of the others not being given; that in the place of the three men removed "three very subservient members were appointed, Mr. Vreeland of New York, and Mr. Bannon, of Ohio, being two of these," and the article adds:

"So this committee was fixed from that time on to make it impossible to get any legislation through unless it was O. K.'d by the National Association of Manufacturers."

The Congress in which this is alleged to have taken place is not given, but from the surrounding circumstances it appears to have been the intention of Mulhall to assert that it was at the time the House Committees were appointed for the Sixty-first Congress. The Judiciary Committee for that Congress was appointed near the close of the extraordinary session in August, 1909.

Mr. Mulhall, Mr. Emery, and Mr. Gardner each testified before the committee and were closely examined upon the statement. The substance of Mulhall's testimony upon this point is that he and Emery discussed the matter, and that in the latter's office certain persons were agreed upon to constitute at least one and perhaps others of the subcommittees; that Mr. Emery wrote on a slip of paper the names of five men to be suggested for appointment on subcommittee No. 2; that Mr. Mulhall communicated this to Mr. Gardner, and that they were so appointed.

There has been proven and placed in the record a copy of a telegram sent by Mulhall to Emery, which reads as follows:

WASHINGTON, D. C., *February 11, 1910.*

JAMES A. EMERY,
National Association of Manufacturers,
170 Broadway, New York:

Subcommittee No. 2 appointed as suggested and bill referred to that committee by Chairman Hughes, of New Jersey, making personal canvass of full committee to try to force bill out next Tuesday.

M. M. MULHALL.

(Charge James A. Emery.)

Also there have been proven and placed in evidence letters written by Mulhall about the same time in which there are statements tending to corroborate his assertions in this regard.

Mr. Emery and Mr. Gardner each make denial of the truth of these assertions. Mr. Emery undertakes to explain the telegram above quoted by saying that it evidently had reference to an effort which he and others were making to obtain a hearing upon an "eight-hour" bill. This explanation is not satisfactory to your committee. Its wording, it seems to us, must naturally leave the impression of at least some conference or discussion relative to appointment of the subcommittee, and does not appear to reasonably bear the construction of having reference to a hearing. That Mr. Gardner did, during his last term as chairman, become indifferent to the fate of "labor measures" which he had formerly championed and made practically no effort to press them we think can not be questioned in the face of his own statements in the record. Whatever his motives, the fact stands out prominently

In view of the conflicting testimony, the interest of the witnesses and all the surrounding circumstances, the committee is left in the realm of doubt as to the verity of the allegations concerning these subcommittee appointments.

The two instances above cited are the only cases related in the Mulhall article. However, there are in the correspondence placed in evidence references to indicate clearly that the N. A. M. and the N. C. I. D. felt a deep interest in the personnel of the Judiciary and Labor Committees, and we think undoubtedly that this interest was at times evinced by expressions from its representatives and officials.

It is in evidence that shortly prior to the election of the committees of the Sixty-second Congress (this being the first Congress after the rule had been altered to provide for the election of committees by the House itself instead of appointment by the Speaker), in April, 1911, Mr. John Kirby, jr., of the N. A. M., and Mr. Emery, while calling upon Mr. Oscar W. Underwood, chairman of the committee designated

to nominate to the Democratic caucus the Democratic members of the committees, expressed to him their interest in these two committees. Both of these gentlemen were examined upon this matter, and it appears from their testimony that this conversation was general in character. No persons were suggested for membership, and no requests were made for the appointment or against the appointment of any individual.

Mr. Samuel Gompers and Mr. Frank Morrison testified before the committee as to the efforts of the A. F. L. relative to the appointment of committees.

The Committee on Labor, according to the testimony of Mr. Gompers, was created some 20 years ago for the purpose of having committed to it those matters of legislation particularly relating to workmen. Mr. Gompers states that he addressed a letter to the late Speaker Thomas B. Reed (probably in the Fifty-fourth Congress) requesting the appointment of Mr. Thomas W. Phillips, of Pennsylvania, as the chairman of that committee; that after the retirement of Mr. Phillips from Congress he, as president of the American Federation of Labor, addressed a similar letter to the same Speaker, requesting the appointment of Mr. John J. Gardner, of New Jersey, as chairman. It is also in evidence that in the Sixty-second Congress, the American Federation of Labor, through its officers, indorsed Mr. William B. Wilson, of Pennsylvania, for appointment as chairman of this committee, and in the Sixty-third Congress indorsed Mr. David J. Lewis and Mr. Frank Buchanan, in the order named, for such appointment. This testimony is given by both Mr. Gompers and Mr. Morrison, and it is stated that this indorsement was conveyed to Mr. Oscar W. Underwood in person. Mr. Gompers took no interest in any committee other than the Committee on Labor and only as to the chairmanship of that committee. Mr. Morrison testifies that he did offer some suggestions or ask for some recognition of the so-called labor group on the Committee on the Judiciary; this we assume was done by him as a representative of the A. F. L.

These are all the efforts that appear from the testimony to have been made by the American Federation of Labor. The several gentlemen indorsed for the chairmanship of this committee seem to have been appointed, whether because of this indorsement, of course, your committee is not advised.

So far as your committee could ascertain, the other organizations that have been referred to have made no efforts relative to committee appointments of any character, nor has any evidence or fact been brought to our attention of any efforts by any other organization, corporation, association, or person.

EFFORTS IN ELECTIONS.

By the second paragraph of the resolution the committee was directed to "inquire whether money has been used or improper influence exerted by said National Association of Manufacturers or other person, persons, association, or organization or any agent thereof to accomplish the nomination or election or secure the defeat for nomination or election of any candidate for the House of Representatives."

It has been heretofore stated that Mr. Mulhall, as field agent of the N. A. M., was the chief character in the general conduct of its political activities—that is, its activities in elections. In his article in the World and Tribune he related a number of instances in which, acting for the organization, he participated actively in the efforts to influence and bring about the election or defeat of candidates for public office.

The contests for election to the House of Representatives, in which he therein claimed the N. A. M. took part and in many of which he participated for the association, were (1) in the State of Maryland in 1904 in behalf of Messrs. Frank Wachter, Sydney E. Mudd, and Charles Shearn; (2) in 1906, during July, August, and September, in the State of Maine, in behalf of Mr. Charles E. Littlefield; (3) later in that year, in the State of New Jersey, "doing campaign work in the seventh and eighth districts, represented by Parker and Wiley"; (4) in the State of New York, in behalf of Mr. George W. Fairchild in different years; (5) in the State of Wisconsin, in behalf of the late Representative Jenkins in 1908; (6) again, in New Jersey, in opposition to Mr. John J. Gardner in 1908—and in his behalf in 1910; (7) in the State of Ohio, in behalf of Mr. Ralph D. Cole; (8) against Mr. Loudenslager in New Jersey in 1910; (9) against Messrs. Wilson and Nichols in Pennsylvania in 1910, fighting the former also in 1912; (10) against Mr. Hughes, of New Jersey, at different times and particularly in 1910; (11) in behalf of Mr. Haskins for nomination in the State of Vermont; (12) in behalf of Messrs. Bartholdt and Coudrey in the State of Missouri.

Mr. Mulhall claimed to have personally participated in all these contests, except those of Messrs. Loudenslager, Wilson, Nichols, Bartholdt, and Coudrey. He did not claim to have gone personally into the Haskins' district in Vermont, but states that he sent him $300 for his campaign fund, this being done on behalf of the association.

He also claims to have written letters in behalf of Mr. James T. McDermott, in 1908, to manufacturers in his district, but, whether this was at the instance of the N. A. M. or upon his personal responsibility, is not stated. He was personally in that district in 1912, but this was after the severance of his connection with the association.

We shall not undertake to discuss in detail his alleged doings in all these several districts. In many of them his participation was slight, and but little time was spent. He seems to have worked principally among the labor people in so far as his personal efforts were concerned, at times organizing his "Workingmen's Protective Association." That in this work he was given considerable discretion is apparent.

We think it probable that many may have drawn from his article a somewhat exaggerated impression of his own activity in these contests.

That the N. A. M. did participate actively and energetically in a number of these campaigns is, however, clearly established. Since about the year 1903 it has participated to a greater or less extent in political activities, giving encouragement and support to those who have strongly advocated the views for which it stood, rendering financial assistance to their campaigns at times, and opposing those who, by vigorous advocacy of the measures they have antagonized, have rendered themselves politically obnoxious to the association. It is true that the association sympathized with the late Judge Jenkins of Wisconsin, and sought to aid him in his campaign in 1910. It does not appear, however, that it furnished him any financial assistance other than the expense of sending Mr. Mulhall to his district and his maintenance while there. Mr. Van Cleave did raise $1,000 for the purpose of sending to his district, but did not send it after being advised that sufficient funds were being contributed from other sources.

It seems, also, to be established that it opposed Mr. Gardner, of New Jersey, in 1908, and supported him in 1910, but its efforts in neither campaign appear to have been very extensive. Mr. Hughes, of New Jersey, was most vigorously opposed in 1910, and the N. A. M. or N. C. I. D., one or both, expended not less than $3,500 in his district in the effort to encompass his defeat.

The efforts of Mulhall in behalf of Mr. Ralph D. Cole in his district seems to have been very few. He visited the district one time and spent not exceeding two days there, and the evidence does not disclose any particular work done by him. After his return to New York he seems to have been requested by Mr. Cole, or some one acting for him, to try and keep a Mr. Heiserman, who was very bitterly opposing Mr. Cole, out of the district. Heiserman had been a local attorney for the Pennsylvania Railroad at Urbana, Ohio, and was a citizen of that town. About the time of this particular campaign he had been promoted and was spending a portion of his time at the Pittsburgh, Pa., legal offices of the Pennsylvania Railroad. Mr. Cole, or some one acting for him, seems to have telegraphed Mulhall urging him to try and keep Heiserman in the east, and Mulhall did go to Philadelphia in an effort to get some of the high officials of the road to try and influence Heiserman to stay away. The effort was unsuccessful.

In connection with this incident it seems appropriate at this point to discuss certain other of the allegations relating to Mr. Cole appearing in the newspaper articles.

It is therein alleged, in substance, that Mr. Cole while a Member of Congress was a subservient adviser and emissary of the N. A. M.; that upon one occasion Emery sent Mulhall after Cole, and that the latter went to the office of the former and was there severely reprimanded by Emery for his attitude toward the Speaker; that Mr. Cole "began to splutter an explanation," but "before leaving the office he promised, in the presence of Emery and myself, that he would quit his activities along those lines and help us, as directed by Emery to do."

Mr. Cole voluntarily appeared before your committee and asked to be heard. His testimony was full, frank, and candid. Upon the allegation recited he testified that upon one occasion Mulhall came to his office and attempted to protest against his (Mr. Cole's) action relative to a certain legislative program in which President Taft was interested, and states (hearings, page 2663):

"He never got any further with that protest. I ordered Mr. Mulhall out of that room, and I told him if he ever returned I would throw him through the window, and I have never seen Mulhall from that day to this. That is the way I went to the office of the National Association of Manufacturers. That is the last and only time I ever talked with Mulhall on matters pertaining to legislation.

"Fortunately there was a witness to that scene. I thank God, in the light of subsequent events, that I was not alone at that time, but that a man of the most rugged integrity was there, from the State of Ohio, a friend who served with Mr. Willis and me four years in the Legislature of Ohio. I wish to pause to remark that Mr. Emery in his testimony before the Senate committee has denied that I ever came to his

office at any time, but he has forgotten the time that I asked him for the list of delegates.

"Now, Mr. Chairman, this man is Mr. Clyde Painter.

"Mr. STAFFORD. For a list of delegates or for a list of members?

"Mr. COLE. For a list of members in the association in my district. C. R. Painter, of Bowling Green, was here to get one of his friends appointed as postmaster at Bowling Green and another at North Baltimore. There was a Democrat, Gen. Sherwood, representing his district, and consequently, being a friend of mine, he called on me and lived with me in my rooms at the hotel during that time. He was in my office when Mr. Mulhall came in, and a few days ago he came to me in Findlay and said "I remember when Mr. Mulhall came into your office and will make affidavit to it." If you want him here to testify, I will have him here to-morrow, but this is his affidavit [indicating]. It reads:

"THE STATE OF OHIO, *Hancock County, ss:*

"C. R. Painter, being first duly sworn, says near the 1st day of February, 1910, he was in Hon. R. D. Cole's office in Washington, D. C., when Mr. Mulhall entered said office and engaged in conversation with Mr. Cole, representing that he had a message from Mr. Cannon. Mr. Cole became very angry and ordered Mr. Mulhall from his office. Mr. Mulhall left, and Mr. Cole and this affiant spent the rest of the day together, and this affiant says that Mr. Cole did not on that day go to Mr. Emery's office, nor did he go on that night.

"C. R. PAINTER.

"Sworn to before me and signed in my presence this 9th day of September, 1913.

"E. T. DUNN,

"*Notary Public, Hancock County, Ohio.*"

Mr. Cole states positively that he never at any time received any compaign contribution from the N. A. M. or any of its officials (p. 2659).

In view of all the testimony, your committee thinks it fair to state it does not believe that he was an emissary of this association or its agent in any way, or that he ever received any financial reward therefrom. We think Mr. Mulhall is in error as to having conducted Mr. Cole to Emery's office as stated, and that the entire allegation as to this meeting at Emery's office and what occurred there is untrue. Mulhall's own testimony upon it is confusing and contradictory upon its face.

The most vigorous efforts which have been put forth by the association in any campaign were those exerted in 1906 in behalf of Mr. Charles E. Littlefield, of Maine. Because of the great prominence which Mr. Littlefield had attained in the country, as well as by reason of the conspicuous forces engaged for and against him, that contest excited extraordinary interest and is a well-remembered event of recent political history.

In his narrative Mr. Mulhall discusses it in much detail, and, being examined concerning it, reiterated under oath substantially what he had said in the article. The repetition of his statement and testimony is deemed unnecessary here.

Mr. Littlefield has testified also before the committee concerning it at great length and with a fullness which leaves little or nothing to be desired.

The duty of your committee under the resolution does not require that we enter upon an exhaustive review of all this testimony upon all the phases of the allegations made and denied or admitted.

The essential facts under the resolution are that in that year Mr. Littlefield was opposed, first, for the nomination, and then for election. The American Federation of Labor entered the lists against him, and from nearly all parts of the country financial aid was rendered him by individuals and associations that were antagonistic to the A. F. L. and in sympathy with the views which Mr. Littlefield entertained. Included among these were many members of the N. A. M. Marshal Cushing, then its agent, went personally into the district and rendered such aid as he could in the nominating campaign and later in the election. Mulhall was sent there to aid in the fight for election. From various sources contributions were made to his campaign fund.

There was filed with your committee and published as "Appendix E" to the hearings an affidavit of Mr. Fred W. Wight, chairman of the Republican committee in that district, and, as such, manager of Mr. Littlefield's campaign for election, stating that he had entire charge of the finances of said campaign and that from July 31 to September 11 the contributions amounted to $20,661.06. There is no evidence as to contributions prior to July 31. Mulhall's expenses and salary while there were paid by the N. A. M., and not out of this fund. It appears that there were probably some additional contributions by county candidates that were not included in this fund.

Mr. Littlefield does not know who all the contributors were. Some of them were members of the N. A. M.; others were not. It is Mr. Littlefield's impression that the N. A. M. as an organization did not contribute, but of this he does not claim to be positive. Mr. Cushing was instrumental in raising part of this fund. On page 2742 of the record there is printed a list filed by Mr. Littlefield of 38 names to whom he wrote letters of thanks after the election. All of them were nonresidents of the State of Maine. These were all contributors to his campaign fund, with the possible exception of Cushing. Mr. Littlefield states that this does not include all the contributors, and from memory gave the names of such others as he could.

No detailed statement is available as to the manner of the expenditure of this fund. Mr. Littlefield testifies as to this, beginning at page 2747. He gives as items of expense the rent of halls, hire of bands, printing posters, postage, expense of bringing voters who were out of the district home to vote, the number being estimated at from 1,000 to 1,500 and cost from 50 cents to $12 and $15 per voter, and payments to men, who he says, took time from their personal business to work for him in that campaign. He estimates a "net expenditure" of about $15,000. Mr. Wight was paid $1,000 for his services, $1,000 was returned to the congressional committee, and to Mr. Littlefield himself there was paid out of this fund the sum of $3,000 to reimburse him for expenditures he had himself made for his own nomination and election. This last act your committee regards as one of most doubtful propriety.

In his article and in his testimony Mr. Mulhall says much of the use of liquor in influencing voters in this election. No elaborate investigation was made as to this, but upon the whole his statement appears to be exaggerated, and, at any rate, whatever was done in this regard clearly appears to have been without Mr. Littlefield's connivance, consent, or knowledge.

In the effort to defeat Representative Frank Buchanan, of Illinois, for election the N. C. I. D., in 1912, contributed the sum of $500 to the campaign fund of his opponent.

It has been recited that Mr. Mulhall's political work has been largely done by organizing, in those sections where he worked, branches of the Workingmen's Protective Association, and using this in his campaigns, the expenses being borne by the N. A. M. Mr. Bird and Mr. Kirby have each testified as to this, as has Mr. Emery, Throughout the multitude of expense accounts of Mr. Mulhall placed in evidence there were items reading: "Paid member of the Stone Hoisters' Union" so much; "Paid member of Silk Weavers' Union" so much; "Paid to party workers to do campaign work and gather information in the labor unions" so much, etc. All these items were, according to Mulhall, for political work by the persons described, but not named, employed by him, except that in some instances the employment might have been for the obtaining of information to be used in connection with efforts to break strikes. It was understood by Mr. Bird and others who passed upon Mr. Mulhall's accounts that he was employing these individuals in connection with the organization of these workingmen's protective associations, and he was not required or expected to give the names of the persons so employed.

The committee of the Senate engaged in lobby investigation had, prior to the organization of the House committee, issued subpœnas for and obtained the books and papers of the N. A. M. and N. C. I. D. It caused an examination of the books to be made by an expert accountant, and his testimony taken by the Senate committee has been adopted by your committee and published as a part of the record, being "Appendix C," page 2909.

This evidence shows the aggregate expenditures, by years, of the N. A. M. from March 31, 1904, to March 31, 1913, March 31 being the end of its fiscal year.

The total as given by Mr. Frawley was $1,785,398.37. This was expended for the following general purposes in the following amounts: President's office, $98,381.19. Secretary's office, $15,139.59. General office, $253,760.30. Membership, $134,259.94. Public affairs. $245,337.39. Board of directors, $13,812.82. Committees, $68.294.19. Convention, $38,979.71. Convention reports, $14,592.01. Freight bureau, $87,438.68. Foreign department (general), $120.679.55. Translations, $108,690.81. Credits, $59,680.47. Collections, $44,005.77. Lists, $12,996.87. Special reports, $2,729.68. Bulletin, $9,946.35. Law department (general), $26,401.57. Patents and trademarks, $20,849.19. American industries, domestic, $193,001.97. American industries, export, $119,435.92. American Trade Index, $62,361.88. Miscellaneous printing, $2,268.48. Fixtures and library, $17,490.82. Miscellaneous, $8,401.19. Service to Members, $11,751.41. Field men, $53,035.27.

The public affairs expenditures included "publicity work, amounts paid Mulhall tariff commission convention, and other field men." We understand that the funds expended in political campaigns are included under this head. Of the "public affairs" amount of $245,337.39, there seems to have been "refunded" by the N. C. I. D. $58,324.65, leaving a net balance of $187,012.74.

Frawley Exhibit No. 3 shows that from September 30, 1906, to January 31, 1912, there was paid to Mulhall by the N. A. M. $41,004.90 for salary and expenses, and Frawley Exhibit No. 3a shows that from April 3, 1909 to November 1, 1910, there was paid to him by the N. C. I. D. the sum of $5,418.80.

Frawley Exhibit No. 5 shows the N. C. I. D. to have paid James A. Emery from January 31, 1908, to July 1, 1913, the sum of $74,440.98.

It has not been possible for your committee to ascertain the aggregate amount which these organizations have expended in the effort to effect nominations and elections of Members of the House of Representatives, but we find that money has been by them expended for that purpose.

Passing from the simple question of the use of money to that of whether "improper influence was exerted," this being the second part of paragraph 2, your committee has to report that it looks with greatest suspicion upon the act of sending Mulhall abroad in the country furnished with funds to organize temporary and speedily dissolving associations for use in elections, as was done again and again, and the secretiveness practiced induces in the common intelligence of men a surmise that there was not that scrupulousness which is attendant upon cleanly political practice. Mr. Mulhall's political work seems to have been largely to proselyte members of labor unions along political lines and to do it by the use of money. The officials of the N. A. M., particularly Mr. Bird, knew this fact well, and Mr. Emery, of the N. C. I. D., also understood it, and Mulhall's accounts on their faces were made ambiguous, but were well understood in the office and were passed without question. The extent of the political influence thus exerted your committee can not tell, but the method was improper and dishonest, and to the extent that this method was used it was the exertion of improper influence, and was disreputable.

The political activities of the American Federation of Labor seem to have begun in 1906; that is to say, this was the first occasion upon which the organization attempted to influence the election or defeat of persons for Congress. In March of that year there was formally presented to the President of the United States, the President pro tempore of the Senate, and the Speaker of the House by the executive council of the American Federation of Labor what was termed a "bill of grievances"; this will be found in full, beginning at page 2415 of the House hearings.

After reciting a belief that the Congress of the United States was manifesting indifference toward the legislation which the American Federation of Labor was demanding, there are set out the several questions in which it was at that time primarily interested, including the eight-hour law, convict-labor legislation, immigration restrictions, seamen's rights, ship subsidy, trusts and interstate commerce, anti-injunction bill, creation of Department of Labor, and the right of petition by Government employees. And following this there is the statement "labor now appeals to you, and we trust that it may not be in vain. But if, perchance, you may not heed us, we shall appeal to the conscience and the support of our fellow citizens." This indicated quite clearly the purpose of the federation to do that which it subsequently did do, viz, enter into political activities. Its first and principal efforts in that year seem to have been put forth in the second district of Maine in opposition to Mr. Littlefield, who was opposed for nomination, and, after being nominated, was opposed for election.

There was expended by the American Federation of Labor in his district about the sum of $1,500; this was used in the payment of expenses of speakers, six of whom, including Mr. Gompers himself, made speeches in the district in opposition to Mr. Littlefield; in paying rent for halls, printing of pamphlets, circulars, postage, and clerical work for addressing the matter mailed out. We find no record of expenditures for any other purpose than these. An interest was also taken in that year in the sixth New Jersey district in behalf of Mr. William Hughes for election as a Member of the House of Representatives, and in the eleventh Wisconsin district against the reelection of Mr. John J. Jenkins, and to the extent of a few speeches in some other districts in the country. But in none of these was there displayed as great an activity as in the Maine district referred to. The work in the other districts seems to have consisted wholly of a few addresses and the mailing out of literature. The expenditures for that year amounted to a little more than $8,000 for all political purposes.

An itemized statement of the receipts for political expenditures and the disbursement of same, showing the sources from which derived and the payments out, will be found, for the several campaigns in which the A. F. L. participated, beginning at page 2428 of the hearing.

In 1908 the American Federation of Labor again participated actively in the political campaign, there being expended in that year a little less than $8,500. The president, Mr. Gompers, made a general tour of the country, going into many congressional districts and speaking in behalf of the Democratic candidate for President of the

United States, and in behalf of candidates for Congress in various parts of the country. Other speakers were likewise sent out by the federation, and literature was mailed, the records of various sitting Members of Congress upon legislation in which the A. F. L. was interested being furnished upon request of those seeking it. This record furnished was simply the record as compiled from the Congressional Record and gave the statement as to how the Member voted upon the several questions.

In the year 1910 there was also political activity on the part of the A. F. L. similar in all respects to those exercised in the prior years, except that the amount collected and expended in the latter year was only about $3,600.

In the year 1912 there were no political expenditures and no political efforts put forth by the organization as such.

To the extent above set forth the committee finds that the A. F. L. did in the years named and in the manner described use money for the purpose of effecting the nomination and election of Representatives in Congress.

EMPLOYMENT OF HOUSE EMPLOYEES.

We have also made examination with reference to the employment and use of House employees. The substance of this allegation was that a chief page of the House, I. H. McMichael, was in the employ of the N. A. M., and the intimation was that he had used the pages of the House to spy upon Members, obtain information that might be gotten from overhearing conversations, and for other purposes, inconsistent with their duties as employees of the House; also during the course of the investigation it was charged that Henry Neal, the colored man who has served for many years as Speaker's messenger, and Harry Parker, for a long time messenger or janitor of the Committee on Ways and Means, were in the employ of the association.

We deem it unnecessary to review in detail the evidence respecting the employees. We find that I. H. McMichael while a chief page of the House was employed by Mulhall, and that the fact was either known to Mr. Emery at the time or when it later came to his knowledge, was ratified by him, and also that his employment was ratified by Mr. Byrd when it came to his knowledge, and McMichael was paid by the N. A. M. and the N. C. I. D. The weight of the testimony is that he received a salary of $50 per month and was in the service from some time in the fall of 1909 until the close of the regular session of the Sixty-first Congress in August, 1910; and again from the beginning of the session in December, 1910, until the 1st of January, 1912; that is to say, during the year 1911 he received pay not only while Congress was in session but during the vacation as well.

It should be stated here that at the beginning of the extraordinary session of the Sixty-second Congress in April, 1911, McMichael ceased to be a chief page of the House and became for a time an employee located in the press gallery, serving in this capacity for a few months, after which he became an elevator operator, where he was employed until the publication of the charges, when he was discharged.

The services rendered by McMichael to the N. A. M. seem to have consisted principally of the obtaining of such public documents, bills, reports, etc., as were desired by Mr. Emery or Mr. Mulhall. At times he would also ascertain by inquiry of the clerks of the committees the status of bills pending before such committees, when hearings would be had, and like information of a public character. So far as your committee can determine, the work performed by Mr. McMichael was nothing more than that which any person familiar with the document room and having a general idea as to procedure and custom in the House might have performed. He did at one time furnish Mulhall with advance information of an amendment that was to be proposed to an appropriation bill. This has been referred to before and will be again discussed. Your committee does not believe that employees of the House should be permitted to accept outside employment, even of the character given McMichael in this instance. It tends to excite suspicion in the public mind, and may lead to dangerous and improper activities. This action of the N. A. M. officials in employing him and of McMichael in accepting the employment meets the strong disapproval of your committee. It was a violation of all the proprieties, and all persons connected with it deserve the severest censure.

As for the use of the pages in the manner alleged, there is no evidence to substantiate this charge in any respect. McMichael did a few times, perhaps, send one of the small boys with documents to Mr. Emery's office. This was improper in that it took an employee of the House and sent him upon a private mission, thus removing him from his place of duty, but the child, being under control of the chief page, of course, was innocent of any intent of wrongdoing.

We think the weight of the evidence is against the allegation that the colored messengers were regularly in the employ of or maintained any contractual relations with these organizations or their officers. Henry Neal, the Speaker's messenger, having

access to the floor under the rule of the House, did at times go in for Members whom Mulhall might desire to see, and he probably showed some courtesies to officials of the organizations and their families in placing them in the gallery and admitting them to the Speaker's anteroom. Parker, messenger of the Ways and Means Committee, seems at times to have procured some public documents of that committee for some of the officials interested. For these services liberal gratuities or "tips" were given them from time to time, and these were accepted. Your committee can not conceive that these men in their position and circumstances could have been considered as able to aid or effect in any way the course of legislation, and does not believe that they were employed as agents, but we think the acts of those men who were here as professional lobbyists, in constantly bestowing gratuities upon these employees, were reprehensible in the extreme and generally we feel that there is impropriety in the tipping of even the menial employees of the House.

Your committee have carefully considered the testimony and findings of the select committee in regard to the lobby activities and operations of the National Association of Manufacturers and the kindred association known as the National Council for Industrial Defense, which, it appears, was an association in name only, with officers and agents but without well-defined membership. It seems to have been organized as a mere adjunct to and mouthpiece of the National Association of Manufacturers to aid in carrying out its legislative program at the Capital and carrying on political work in campaigns for the election of Representatives and Senators in different parts of the country. The record discloses that the National Association of Manufacturers, through its duly constituted agent, M. M. Mulhall, secretly employed and placed on the pay roll of the association I. H. McMichael, chief page of the House in the Sixty-second Congress, and paid him a stipulated amount or salary of $50 per month, which contemptible transaction was known to and sanctioned by the chief officers of said association. The testimony shows that at the beginning of a new Congress the officers and agents of this association attempted by surreptitious means to control or influence the organization and the personnel of certain committees of the House and the subcommittees thereof in the interest of that association, and in some instances their agent Mulhall boasted that they had done so. The testimony shows that the association and its kindred association, the National Council for Industrial Defense, took an active and vigorous part in congressional campaigns, taking a lively interest in the reelection of Members whose views were in harmony with their legislative program and resorted to questionable and disreputable means to bring about the defeat of Members who had not approved their policies. The testimony shows that large sums of money were expended in these congressional campaigns, and that they extended their campaign activities into various districts throughout the country. The methods employed were secretive, reprehensible, and deserve the severest condemnation by the House.

We have already called attention to the fact that the National Association of Manufacturers and the National Council for Industrial Defense are kindred organizations, apparently operating and acting together for a common purpose. J. Philip Byrd is general manager of the National Association of Manufacturers. John Kirby, jr., is president of the National Council for Industrial Defense. Mr. Byrd is secretary and treasurer thereof and receives a salary of $3,000 per annum as such. Mr. Emery is counsel and receives a salary of $12,000 per annum. M. M. Mulhall, while in the employ of the National Association of Manufacturers, was their field agent, political worker and lobbyist, and his work in these several capacities was

highly praised by the officers of the association and by Mr. Emery, their counsel. In view of these facts and with the record of this case before us, it is the sense of this committee that the officers and agents of the National Association of Manufacturers and of the National Council for Industrial Defense herein referred to, namely, J. Philip Byrd, John Kirby, jr., James A. Emery, counsel, and M. M. Mulhall, are shown by the testimony of the select committee to have engaged in carrying on improper and reprehensible lobby activities and systematic secret and disreputable practices against the honor, dignity and integrity of the House of Representatives, in the Sixty-second Congress. No evidence has been adduced in the hearings to show that similar acts or practices occurred after the beginning of the Sixty-third Congress.

Subcommittee No. 3 of the Committee on the Judiciary to which the report, findings, and testimony of the select committee was referred for consideration, in its report to the full committee recommended that the aforesaid officers and agents of said association be censured by the House and submitted in their report a formal resolution looking to that end, but the Committee on the Judiciary having grave doubts, as already indicated in a previous paragraph in this report, as to the power of this House, under its implied constitutional prerogative, to rightfully punish persons other than Members by censure or otherwise for contempts committed against the House in a previous Congress, declines to follow the recommendation of the subcommittee for the formal censure by the House of the persons named.

LOBBY LEGISLATION RECOMMENDED.

(6) Your committee reports that the testimony taken by the select committee as aforesaid, is voluminous, covering more than 2,900 printed pages and deals not only with the lobby activities of the National Association of Manufacturers and the National Council for Industrial Defense, but with the operations of the American Federation of Labor, the Liquor Dealers' Association of the District of Columbia, the local pawn brokers' association, and other organizations and associations which, by different methods, some proper and some improper, have heretofore attempted by varying means to influence individual Members of Congress and to control or defeat legislation that vitally affected the interests of their respective organizations.

We therefore feel that the most substantial service we can render the House or the country in submitting this report is not in recommending action by the House touching the conduct of its own Members or of particular individuals or associations who have become involved in charges disclosed by the testimony found in the hearings of the select committee, but in recommending the enactment of substantive legislation to prevent the recurrence of similar abuses in the future. With this end in view, by the direction of the Committee on the Judiciary a bill prepared by the subcommittee, the purpose of which is to regulate lobbying before either House of Congress, has been introduced in the House by the chairman of the subcommittee, Mr. Floyd, and has been referred to the Committee on the Judiciary, and is now before the committee for consideration. It is expected that at an early date your committee will be able to perfect and report to the House for its favorable consideration the proposed legislation,

the necessity for which is made manifest by the disclosures of improper and disreputable practices brought to light in the investigations and hearings of the select committee. We submit as a part of this report, for the information of the House, the bill which has been introduced as aforesaid, as follows:

[H. R. 15466, Sixty-third Congress, second session.]

A BILL To regulate lobbying and to require every legislative counsel and agent employed by any person, corporation, or association to promote or defeat legislation to register and to render an accurate account of all moneys expended by him in such capacity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person, corporation, or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by Congress of any legislation affecting the pecuniary interests of any individual, corporation, or association as distinct from those of the whole people of the United States, or to act in any manner as a legislative counsel or agent, shall, within fifteen days after the date of such employment, cause the name of the person so employed or agreed to be employed to be entered upon a legislative docket hereinafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee.

SEC. 2. That the Clerk of the House of Representatives and the Secretary of the Senate shall each, respectively, prepare and keep two legislative dockets in conformity with the requirements of the provisions of this Act, one of which shall be known as the docket of legislative counsel before committees and the other as the docket of legislative agents. In the docket of legislative counsel shall be entered the names of counsel or persons employed to appear at a public hearing before a committee of Congress, or of either House thereof, for the purpose of making an argument or examining witnesses, and also the names of any regular legal counsel of any person, corporation, or association who act or advise in relation to legislation; in the docket of legislative agents shall be entered the names of all agents employed for any purpose in connection with legislation included within the terms of section one of this Act. In such docket shall be entered the name and business address of the employer, the name, residence, and occupation of the person employed, the date of the employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the special subject or subjects of legislation, if any, to which the employment relates. Such documents must be public records and open to the inspection of any citizen upon demand at any time during the regular business hours of the Clerk of the House or of the Secretary of the Senate.

SEC. 3. That any person, corporation, or association employing any legislative counsel or agent shall, whenever further subjects of legislation are introduced or arise which said counsel or agent is to promote or oppose, make or cause to be made additional entries opposite his or its name in the appropriate docket, stating such special employment and specifically referring to the petitions, orders, bills, or other subjects of legislation to which the same relates, and such entries shall also be made opposite the names of such counsel or agents in such manner that such entries shall show all the subjects of legislation in relation to which any counsel or agent is employed. No person shall appear as counsel before any committee of Congress or either House thereof or act as agent in respect to any legislation coming within the terms of section one of this act unless his name appears upon the docket of legislative counsel or agent as employed in respect to such matters as above provided. No person or private corporation or association shall, directly or indirectly, employ any person as legislative counsel or agent in respect to any legislation coming within the terms of section one of this act unless the name of such person is duly entered upon the legislative docket as provided by the provisions of this act. No person shall be employed as a legislative counsel or agent for a compensation dependent in any manner upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of Congress or either branch thereof or of any committee thereof. No person whose name is entered on the docket of the legislative counsel shall render any service otherwise than by appearing before a committee as aforesaid and by doing work properly incident thereto or of giving legal advice in case of regular legal counsel of corporations or associations unless his name is also entered on the docket of legislative agents.

SEC. 4. That legislative counsel and agents required to have their names entered upon the legislative docket shall file with the Clerk of the House and the Secretary

of the Senate, respectively, within twenty days after making such entry, a written authorization to act as such, signed by the person or corporation employing them.

SEC. 5. That within thirty days after the final adjournment of each session of Congress, every person, corporation, or association whose name appears upon the legislative docket of the session shall file with the Clerk of the House and the Secretary of the Senate, respectively, a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation, or association in connection with the employment of legislative counsel or agents or in connection with promoting or opposing in any manner the passage by Congress of any legislation coming within section one of this act. Corporations and individuals required to render accounts within the provisions of this act shall render such accounts in such form as shall be required by the Clerk of the House and the Secretary of the Senate, respectively, and such reports shall be open to public inspection.

SEC. 6. That any person, corporation, or association violating any of the provisions of this act shall be fined not less than $200 and not more than $1,000. Any person employed as legislative counsel or agent who shall fail to comply with any provision of this act or violate any of the provisions hereof shall be fined not less than $100 nor more than $1,000, and shall be debarred from acting as legislative counsel or agent for a period of three years from the date of such conviction. It shall be the duty of the Attorney General upon information to bring prosecutions for the violations of the provisions of this act.

SEC. 7. That the provisions of this act shall not apply to any municipality or to any other public corporation or to any county or State.

SEC. 8. That it shall be unlawful for any person employed for a pecuniary consideration to act as legislative counsel or agent as defined in this act to attempt personally or directly to influence any Member of Congress, or of either branch thereof, to vote for or against any measure pending therein otherwise than by appearing before the regular committees thereof when in session or by newspaper publications or public addresses, or by written or printed statements or arguments or briefs delivered to each Member of Congress: *Provided*, That before delivering such statement, argument, or brief, twenty-five copies thereof shall be first deposited with the Clerk of the House and the Secretary of the Senate, respectively. No officer, agent, appointee, or employee of either branch of Congress or of the United States shall attempt to influence any Member of Congress, or either branch thereof, to vote for or against any measure pending therein affecting the pecuniary interest of such person, excepting in the manner authorized in the case of legislative counsel or agent.

SEC. 9. That any person violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not exceeding $200 or may be imprisoned not exceeding six months.

SEC. 10. That it shall be unlawful for any legislative counsel or agent, or for any person, corporation, or association employing any such legislative counsel or agent, to make any present, gift, or donation of anything of value or to make any campaign contribution, directly or indirectly, or to make any loan of money to any Senator or Representative during the continuance of any such employment or within two years after the termination of such employment.

SEC. 11. That it shall be unlawful for any legislative counsel or agent, or for any person, corporation, or association employing any such legislative counsel or agent, to make any present, gift, or donation of anything of value or to make any campaign contribution, directly or indirectly, or to make any loan of money to any candidate who is opposing for the nomination or for reelection any Senator or Representative during the continuance of any such employment or within two years after the termination of such employment.

SEC. 12. That it shall be unlawful for any Senator or Representative, or for any person who is a candidate opposing for the nomination or for reelection any Senator or Representative, to accept any present, gift, or donation of anything of value, or to knowingly accept, directly or indirectly, any campaign contribution, or to accept any loan of money from any legislative counsel or agent or from any person, corporation, or association employing any such legislative counsel or agent during the continuance of any such employment or within two years after the termination of such employment.

SEC. 13. That any person or corporation violating any of the three preceding sections hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $200 nor more than $5,000.

VIEWS OF THE MINORITY.

The undersigned, members of the Committee on the Judiciary, heartily concur with the committee in holding that the powers of the House over its Members are plenary, that in cases of trial of Members for misconduct technical rules of procedure in courts of law do not apply, that the authority to punish private citizens for reprehensible conduct in connection with the affairs of a previous House is doubtful, and that the enactment of legislation to regulate the lobby is highly desirable, but are unable to agree with the conclusions of the committee as to what action the House should take in the case of Mr. James T. McDermott, a Member thereof, and on that subject very respectfully submits the following views:

Being convinced that Mr. McDermott has been guilty of gross misconduct, wholly inconsistent with his public trust and duty, the undersigned feel constrained to hold, under the precedents and the laws of Congress and the testimony taken by the select committee, that the House should forthwith expel him.

The large purpose of any action to be taken in cases of this kind is not punishment of an individual, but the protection of the honor of the House, the maintenance of the confidence of the people in its integrity, and the preservation of its self-respect before the eyes of the world.

It is a low, a false, and a dangerous conception of congressional ethics, indefensible anywhere, except, it may be, in certain half-civilized lands, that a member of a legislative body may run the gamut of all forms of misconduct if he does but carefully provide such explanations, evasions, shifts, and contrivances that when brought before an investigating committee there shall not be "that satisfactory character of evidence" to convict him beyond a reasonable doubt as if being tried for crime in a court of law. To just barely keep out of the penitentiary should not insure a Member a seat in Congress.

The unvarying standard of official conduct required of Members in the American Congress from the Blount case, in 1797, up to the McDermott case, now before us, has been one of loyalty to trust and duty, not the standard in effect applied by the committee, that criminal conduct must be proven beyond a reasonable doubt. For violating this higher standard of official ethics, William Blount was expelled from the United States Senate by his colleagues, many of whom had been members of the Constitutional Convention, and by the overwhelming vote of 25 to 1. Ever since, without a single exception, when Members have so far forgotten their great privileges and high place as to act in ways inconsistent with duty and station, an overwhelming majority of the membership has called into use that wholesome constitutional power of expulsion.

What is termed censure is for an entirely different purpose, as seen in the precedents. It is that form of correction made use of frequently to maintain order and decorum in the Chamber and to punish violations of the conventions and established etiquette of courteous parliamentary procedure. It is an expression of disapproval of parliamentary offenses that are pardonable, if a Member retracts the unparliamentary language spoken, for this kind of misconduct does not tend to leaven nor taint the whole body with gross immorality or crime. The committee's recommendation is the mildest of the two known forms of censure. Even for parliamentary offenses the offending Member is brought before the bar of the House, where the Speaker pronounces censure upon him; but in this case the committee recommends mere verbal censure for offenses so grave that even the committee finds him guilty of "acts of grave impropriety unbecoming the distinguished position he holds." If it be the purpose of the committee to punish Mr. McDermott, instead of purging the House of his presence in it, surely for so grave and various forms of misconduct the proposed form of censure is entirely illogical, inconsistent, and ineffective.

It is respectfully submitted that from the precedents set forth in the statement attached to this report and made a part thereof it is perfectly clear that there is a wide distinction in purpose between censure and expulsion, as well as entirely different standards of the degree of probative force of evidence required to convict of crime in a court of law as against what is necessary to justify expulsion from a seat in Congress. Everyone must see the reason for this difference. The misdeeds of a private citizen and of a public official lie in wholly different planes. The difference in purpose of any action to be taken is not punishment, but purgation; the difference in the nature of private and public misconduct was well stated by the select committee in these words: "Some things which a private citizen may do with impunity must be avoided by one in official station," and this difference becomes most marked when we look to its inevitable effects. Misconduct by the private individual, the man not clothed with official function, is limited to a very narrow circle of consequences; but quasi corrupt or near-criminal action, whether in its inward essence or its outward form, committed by a Representative in Congress, is incalculable in its far-reaching and ever-widening harmful influence and evil effect. Therefore the House is not primarily concerned with the man temporarily exercising a representative function, but with the purity, the integrity, and the dignity of the representative function temporarily exercised by the man.

In the statement hereto appended are set out the statutes against bribery, extortion, and contributions by corporations of campaign funds. Upon these counts, one or all of them, Mr. McDermott has, in varying degrees, been found guilty of violating the spirit if not the letter of the law.

His attorney said to the Judiciary Committee:

> Gentlemen, I yield to no one in the loftiness of my ideal of the just, honest, and wise legislator. I concede to no man a keener perception of what is unbecoming the dignity of the high office of a Representative of the American people. And this is so because my father was a member of this body from the State that is represented so well by the distinguished chairman of this committee. From him, who was my ideal knight without fear and without re-

proach, I inherited, and by him I was taught, an almost sacred reverence for this high office and for this great body. So that I do not stand here—I can not stand here—to accuse or condone the indiscretions or the acts of impropriety, if you will, which Mr. McDermott has freely confessed before the select committee, for which he has already been bitterly punished. But I say to you, gentlemen, that I do stand here to urge upon you that no further punishment of Mr. McDermott is necessary in this case, all of the facts being considered.

A subcommittee of the Judiciary Committee thus "strongly condemns" his conduct:

We do not exonerate him and can not and have no disposition to exculpate him from the imputations and consequences resulting from his improper acts, as disclosed by the testimony embodied in the hearings. In his associations with M. M. Mulhall, a lobbyist of the National Association of Manufacturers, and in accepting loans of large sums of money from Horning, a pawnbroker, and from Harvey, a member of the Retail Liquor Dealers' Association, both of whom were vitally interested in legislation pending before Congress, we find that Representative McDermott has been guilty of acts of impropriety incompatible with that high sense of honor and decorum which should characterize the conduct of a Member of this House.

The select committee finds him guilty in this language:

The Members of the House know Mr. McDermott, know his ideals, and his characteristics as the public generally does not, and in the nature of things, can not know them. His training and associations have not given him the ethical perceptions and standards relative to public office that usually characterize public men.

We can not say that he has been corrupted in his votes, but some things which a private citizen may do with impunity must be avoided by one in official station, and we should feel that we had shirked a duty which we owe to the House and the country did we not say that we are driven, much to our regret, to the conclusion that he has been guilty of acts of grave impropriety, unbecoming the dignity of the distinguished position he occupies.

Representative MacDonald, in a minority report from the select committee, said:

While I regard the case of Representative McDermott as not the most vital thing developed by this inquiry, being only a case of individual venality resulting from the vicious and corrupting influences which are shown to have been in operation around the House, yet any refusal to recognize the enormity of such shocking disregard by a Member of his solemn duty and trust can not but tend to weaken the standing of the House. The disciplinary powers of the House must be rigorously and unsparingly applied, unless it is intended to minimize the offense.

The undersigned in this minority report respectfully submit that a careful weighing of the evidence by the membership of the House, provided we lay aside for the moment a wholly misplaced feeling of personal sympathy and look at the contradictions, evasions, and shifts in his testimony with cold common sense and dispassionate judgment, must inevitably lead to the conviction that Mr. McDermott is guilty, to say the least, of corrupt misconduct, wholly incompatible with official honor, trust, and duty. His admitted transactions with the District liquor dealers' lobby; his undeniable transactions with the pawnbrokers' lobby; his peculiar relationship with the National Brewers' Association; his proven transactions with Mulhall in accepting sums of money; his inexcusable action in asking the Manufacturers' Association for financial credit; and his soliciting campaign funds from corporations, knowing that such contributions are

in violation of law, these interests being vitally concerned in pending legislation and in every instance it being clear that Mr. McDermott received these funds in his representative capacity—all these venal transactions lead imperatively to the conclusion of guilt to a moral certainty.

And when these grosser offenses are supplemented by his other misdeeds—his abuse of the control of his clerk-hire allowance, in obtaining his clerk's checks many days before due to pawn them with pawnbrokers without payment of interest and for his personal use; his abuse of the franking privilege; his guilty knowledge of the highly questionable conduct of a confidential employee of the House in the pay of a notoriously corrupt lobbyist; his sharing in the salary of such employee, even if only by way of loans, knowing the source; his procuring a room in the Capitol itself for this notorious lobbyist to occupy for months when Congress was in session; his duplicity, double-dealing, and generally dishonorable conduct to the labor people he represents; his bad habits and worse immoralities, suppressed in the record for the sake of decency and innocence—how can we declare to our constituents and to the world at large in a solemn record vote, that shall stand for all time as our approved standard of official conduct, that Mr. McDermott is morally fit and worthy to hold the high office of Member of Congress in this enlightened land we proudly call our country?

This will not be done if Members seriously consider the consequence—the lowered standing of the House of Representatives in the confidence of the American people. This House will be judged by its worst Member, and rightly so, when it approves his misconduct. There is nothing that breeds disrespect for law and justice on the part of the masses of men like the lawlessness in high places, and especially when the lawmaker himself is lawless and the lawmaking body itself protects him in his high place. The cry for the initiative, the referendum, and the recall has but one meaning—increasing distrust of the loyalty, the integrity, and the justice of public servants. If every Member of this House were a McDermott, what would be our standing in the eyes of the people of our country and of the nations of the world? But we make his standard ours when, his misconduct known to us, we permit him to sit in this body to pass laws for the American people.

Consider also its bearing upon our constitutional duty in the impeachment of a judge. Shall we have a double standard, where both are guilty of the same official misconduct, censure for our colleague, the lawmaker, but impeachment for the judge? What Archbald did McDermott has done. What Spear and Wright are charged with, in cases now pending before the Judiciary Committee, McDermott certainly has been guilty of in slightly different form. Surely the House can not afford to apply one standard of ethics for the lawmaker and another for the judge. If we measure the judges before us with the measure applied to Mr. McDermott, as recommended by the committee, how shall we have the hardihood to impeach a judge, except upon evidence of crimes committed beyond a reasonable doubt?

The expulsion of Lorimer raised immeasurably the standing of the Senate in the eyes of the American people; the removal of Archbald

elevated the judiciary, and shall we jeopardize the reputation of the House by merely saying to McDermott:

> We find you guilty of everything short of crime. Nor will we hold that you have not committed crime; but because we fail to find "that satisfactory character of evidence" which would convict you in a court of law, we will only censure you.

Certainly this is most illogical and ineffective. Exposure of misconduct is not punishment; and censure is merely formal declaration of guilt. Just as the penalty for guilt on the part of the private citizen under the law is fine and imprisonment, so the remedy for gross misconduct on the part of the Representative in Congress under the Constitution is expulsion. There is but one course for the House to pursue to keep its honor unsullied, its ideals pure and high; one course alone that will commend itself to our consciences as moral and patriotic men; one course that will be approved by all the people of our country, who will hold us responsible if we fail to vindicate the established standard of official conduct, maintained for more than a hundred years. We can not merely censure Mr. McDermott; for gross, extended, various, and indefensible misconduct in his representative capacity we must expel him.

The following resolution will be offered as a substitute for that of the committee:

> *Resolved*, That James T. McDermott, a Representative from the State of Illinois, having been guilty of gross misconduct entirely inconsistent with his public trust and duty, be, and he is hereby, expelled from his seat as a Member of this House.

Respectfully submitted.

JOHN M. NELSON.
GEORGE S. GRAHAM.

STATEMENT ACCOMPANYING VIEWS OF MINORITY.

The undersigned respectfully submit the following statements as a part of the foregoing views:

The House does not sit as a court to try Members for crimes and misdemeanors, but to determine whether official conduct is consistent with trust and duty.

The committee in its report disclaims any disposition to exonerate or exculpate Mr. McDermott "from the imputations and consequences of his own improper acts as disclosed in the testimony embodied in the hearings"; but the only reason it assigns for mere censure, instead of expulsion, is found in these words:

> We fail to find in the record that satisfactory character of evidence which, in our judgment, would warrant or justify expulsion.

The committee, it is submitted, here falls back into the grievous error of assuming that the House in deciding a case of this kind sits as a trial court to try a Member for crime upon the same technical probative evidence required in a court of law, a position rejected in the body of its report. Upon this point the attention of the House is directed to this paragraph of the report of the select committee in the cases of Oakes Ames and James Brooks, a report cited approvingly by the committee:

> The close analogy between this power and the power of impeachment is deserving of consideration.

The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not the principal object. Members of Congress are not subject to be impeached, but may be expelled, and the principal purpose of expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body, and whose presence in it tends to bring the body into contempt and disgrace.

The language of Charles Sumner in his argument in the Bright case presents, it is submitted, the proper view of the character of evidence required to expel a Member. He says:

Under the Constitution the Senate in a case like the present is the absolute judge, free to exercise its power according to its own enlightened discretion. It may justly declare a Senator unworthy of a seat in this body on evidence defective in form or on evidence which does not constitute positive crime. * * * It is obvious the Senate may act on any evidence which shall be satisfactory to show that one of its Members is unworthy of his seat without bringing it to any test of the rules of law.

Upon this point the precedents are conclusive.

SENATE PRECEDENTS.

On July 3, 1797, the Senate received a letter from the President of the United States, transmitting a letter purporting to have been written by William Blount, a Senator of the United States, for the purpose of laying plans for the cooperation of certain Indians of the South with British agents in an enterprise inimical to the interests of the United States and Spain. This letter was addressed to one Casey, an employee of the United States in the Indian country.

Commenting on this case, Story says:

* * * In July 1797, William Blount was expelled from the Senate for a high misdemeanor entirely inconsistent with his public trust and duty as a Senator. The offense charged against him was an attempt to seduce an American agent among the Indians from his duty and to alienate the affections and confidence of the Indians from the public authorities of the United States and a negotiation for services in behalf of the British Government among the Indians. It was not a statutable offense, nor was it committed in his official character, nor was it committed during the session of Congress, nor at the seat of government. Yet, by an almost unanimous vote (25 yeas to 1 nay), he was expelled from that body and he was afterwards impeached (as has already been stated) for this, among other charges. It seems, therefore, to be settled by the Senate, upon full deliberation, that expulsion may be for any misdemeanor which, though not punished by any statute, is inconsistent with the trust and duty of a Senator. (Commentaries on the Constitution, sec. 836, vol. 1, p. 607.)

In the report on the case of Senator John Smith, of Ohio, Mr. John Quincy Adams says:

The power of expelling a Member for misconduct results, on principles of common sense, from the interest of the Nation that the high trust of legislation should be invested in pure hands. * * *

The question upon the trial of a criminal cause before the courts of common law is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel * * * that doubt must be decisive for acquittal; and the verdict of not guilty, perhaps in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. * * *

But when a member of a legislative body lies under the imputation of aggravated offenses, and the determination upon his cause can operate only to re-

move him from a station of extensive powers and important trust, this disproportion between the interests of the public and the interest of the individual disappear; if any disproportion exist, it is of an opposite kind. It is not better that 10 traitors should be Members of the Senate than that 1 innocent man should suffer expulsion. In either case no doubt the evil would be great. But in the former it would strike at the vitals of the Nation; in the latter it might, though deeply to be lamented, only be the calamity of the individual. (Cited by the committee, Hinds' Precedents, vol. 2, sec. 1286.)

In 1862 Jesse D. Bright was expelled from the Senate for writing a letter to Jefferson Davis, president of the Confederation of States, in March, 1861, introducing one Thomas B. Lincoln, who wished to dispose of an improvement in firearms. The discussion in the Senate shows that many Senators voted for Mr. Bright's expulsion not because he had been guilty of any offense against the laws of this country; he was expelled because it was believed that his desires and conduct were opposed to the interests and the welfare of the Nation. This will be clearly seen from the language used by Mr. Sumner:

But the question may be properly asked if this inquiry is to be conducted as in a court of justice under all the restrictions and technical rules of judicial proceedings? Clearly not. Under the Constitution the Senate in a case like the present is the absolute judge, free to exercise its power according to its own enlightened discretion. It may justly declare a Senator unworthy of a seat in this body on evidence defective in form or on evidence even which does not constitute positive crime. * * * It is obvious that the Senate may act on any evidence which shall be satisfactory to show that one of its Members is unworthy of his seat without bringing it to the test of any rules of law. It is true that the good name of the individual is in question; but so also is the good name of the Senate, not forgetting, also, the welfare of the country; and if there are generous presumptions of personal innocence, so also are there irresistible instincts of self-defense which compel us to act vigorously not only to preserve the good name of the Senate, but also to preserve the country. (Cong. Globe, 2d sess. 37th Cong., pt. 1, pp. 412, 413, 414.)

In the same debate Mr. Davis, of Kentucky, said:

There is no law which defines any particular class of offenses that shall be sufficient to expel a Senator from his seat. The common law does not. There is no statute law that does. There are no rules of evidence establishing technical rules of testimony that are to guide and control and govern this body in getting its lights and reaching its conclusion when a Senator is thus on trial. The general rule and principle of law and of reason and common sense is that whatever disqualifies a Member of the Senate from the proper discharge of his duties, whatever it may be, is sufficient and ought to be held sufficient for his expulsion, and whatever evidence satisfies the mind reasonably and according to moral certainty and truth of the existence of that cause is sufficient evidence, without resorting to the technical rules of testimony upon which to convict him. That is the law of this country. It is the law of England. It is the law of Parliament. I will read from Story's Commentaries on the Constitution, section 836, a short paragraph.

There is the touchstone. Any conduct, any opinions, any line of action as a Senator which is inconsistent with the duty of a Senator is sufficient cause for his expulsion and ought to be the rule of reason and of common sense. * * * The principle deduced from the authorities is this: There is no common law, no statutory law, there is no parliamentary law that binds the Senate to any particular definition of crime or offense in acting in this or any other case of the kind. On the contrary, as these authorities establish, it is a matter coming within the discretion of the tribunal trying the Senator. (Cong. Globe, 2d sess. 37th Cong., pt. 1, pp. 434, 435.)

In the progress of the debate Mr. McDougall said:

* * * It is no question of law. We have not asked whether the Senator from Indiana is guilty or not guilty. We have to judge him in our best judg-

ment, and by that we try him; and we say yea or nay, as we think, whether he be a true man or not to sit in the Federal councils to conduct the affairs of the United States. (Cong. Globe, 2d sess. 37th Cong., pt. 1, p. 635.)

To the same effect were the remarks made in the course of the same debate by Mr. Lane, Mr. Howe, Mr. Johnson, and Mr. Browning. (Cong. Globe, 2d sess. 37th Cong.. pt. 1, pp. 417, 418, 560, 584, 623, 624.)

PRECEDENTS IN PARLIAMENT.

In the British Parliament the same principle has been recognized in a number of cases and is now fully established.

In the year 1812 Benjamin Walsh was expelled from the House of Commons as "unworthy and unfit to continue a member of this House" on account of said Walsh having been guilty of "gross fraud and notorious breach of trust," although his offense was one "not amounting to felony." (67 Commons Journal, 175–176.) In that case the chancellor of the exchequer said:

He could not think that because an act of Parliament did not make a moral crime a legal one the House of Commons should be prevented from taking cognizance of it. (Hansard's Parliamentary Debates, 1st series, vol. 21, p. 1199.)

In the year 1814 Sir Thomas Cochrane was expelled from the House of Commons for being concerned in a conspiracy to spread the false report that the French Army had been defeated, Napoleon killed, and that the allied sovereigns were in Paris, the object to be attained by such false report being "to occasion a temporary rise and increase in the prices of the public Government funds" to the injury of those who should purchase such funds "during such last-mentioned temporary rise and increase in the prices thereof." (69 Commons Journal, 427–433.)

HOUSE PRECEDENTS.

In the cases cited in the majority report in which the conduct of Oakes Ames, a Representative from Massachusetts, and James Brookes, a Representative from the State of New York, was under investigation by a special committee. This select committee said:

The close analogy between this power and the power of impeachment is deserving of consideration.

The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not the principal object. Members of Congress are not subject to be impeached, but may be expelled, and the principal purpose of expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body and whose presence in it tends to bring the body into contempt and disgrace.

* * * Upon what principle is it that such a jurisdiction can be maintained? It must be upon one or both of the following: That the offense shows him to be an unworthy and improper man to be a Member or that his conduct brings odium and reproach upon the body. (Hinds' Precedents, vol. 2, p. 862.)

STATE PRECEDENTS.

The case of His *v.* Bartlett: In this case His was expelled on the ground that his "conduct on a visit to Lowell, as one of the committee of the House, was highly improper and disgraceful, both to himself and to the House, of which he was a Member."

Everything said by the court had relation to such a state of facts. The case is one of expulsion for gross misconduct as a Member and in the performance of his duty as a Member.

Speaking through Chief Justice Shaw, the court, among other things, said:

The power of expulsion is a necessary and incidental power to enable the House to perform its high functions and is necessary to the safety of the State. It is a power of protection. A Member may be physically, mentally, or morally wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language. It is necessary to put extreme cases to test a principle. (3 Gray, 468.)

TEXT WRITERS ON CONSTITUTION.

Von Holst's says:

Both Houses of Congress must have been granted every power needed to guard themselves and their Members against any impropriety on the part of a Member and to preserve their dignity and reputation among the people. It is wholly for them to say what conduct they are to regard as dishonorable enough to require expulsion. An appeal from their decision lies only to the court of public opinion, a court which brings in its verdict at the elections. (Constitutional Law of the United States, 102.)

Cushing says:

It seems necessary, also, to remark that a Member may be expelled or discharged from sitting as such, which is the same thing in milder terms, for many causes for which the election could not be declared void. (Law and Practice, Legislative Assemblies, p. 33, sec. 84.)

Paschal says:

It seems to be settled that a Member may be expelled for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of a Member. (Paschal on the Constitution, p. 87.)

Tucker says:

The motion to expel a Member may be for disorderly behavior or disobedience to the rules of the House in such aggravated form as to show his unfitness longer to remain in the House, and the cases above cited, as well as the reason of the provision, would justify the expulsion of a Member from the House where his treasonable and criminal misconduct would show his unfitness for the public trust and duty of a Member of either House. (Tucker on the Constitution, p. 429.)

Cooley says:

Each House has also power to punish Members for disorderly behavior and other contempts of its authority, as well as to expel a Member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is generally enumerated in the Constitution among those which the two Houses may exercise, but it need not be specified in that instrument, since it would exist whether expressly conferred or not. It is "a necessary and incidental power to enable the House to perform its high functions, and it is necessary to the safety of the State. It is a power of protection. A Member may be physically, mentally, or morally wholly unfit; he may be afflicted with a contagious disease or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language." And, "independently of parliamentary customs and usages, our legislative Houses may have the power to protect themselves by the punishment and expulsion of a Member," and the courts can not inquire into the justice of the decision or even so much as examine the proceedings to see whether or not the proper opportunity for defense was furnished. (Const. Lim., vol. 1, p. 526.)

LEADING CASES OF PARLIAMENTARY OFFENSES WHERE SPEAKER PRONOUNCED CENSURE.

Wood: Hinds' Precedents, volume 2, section 1247.
Hunter: Hinds' Precedents, volume 2, section 1249.
Brown: Hinds' Precedents, volume 2, section 1251.
Bynum: Hinds' Precedents, volume 2, section 1259.

LEADING CASES SHOWING ACTION BY MAJORITY OF THE SENATE OR HOUSE IN FAVOR OF EXPULSION FOR MISCONDUCT INCONSISTENT WITH PUBLIC TRUST AND DUTY.

Blount: Hinds' Precedents, volume 2, section 1263.
Smith: Hinds' Precedents, volume 2, section 1264.
Bright: Hinds' Precedents, volume 2, section 1269.
Deweese: Hinds' Precedents, volume 2, section 1239.
Whittemore: Hinds' Precedents, volume 2, section 1273.
Butler: Hinds' Precedents, volume 2, section 1274.
Gilbert, Edwards, and Matteson: Hinds' Precedents, volume 2, section 1275.
Simmons: Hinds' Precedents, volume 2, section 1281.
Ames and Brooks: Hinds' Precedents, volume 2, section 1286.

CONCLUSION.

From the leading cases of the Senate and Parliament, from speeches of Members of Congress who were famed statesmen, from learned text writers on the Constitution, and from the precedents of the House cited approvingly by the whole committee, it is shown beyond any possible doubt that evidence is not required sufficient to convict in a court of law, but that the test is misconduct inconsistent with trust and duty. Thus, the resolution of expulsion in the case of William Blount fixed the standard as guilty of misconduct "entirely inconsistent with his public trust and duty as a Senator." This language was followed 10 years later in the resolution of expulsion of Senator Smith, in the following language: Guilty of conduct "incompatible with his duty and station as a Senator."

Attention is directed to the fact that the very resolution reported in this case by the majority of the committee condemns the conduct of Mr. McDermott upon this same high ground. This resolution finds him guilty "of acts of impropriety incompatible with that high sense of honor and decorum which should characterize the conduct of a Member of this House," and guilty "of acts of impropriety unbecoming the distinguished position he held." This resolution twice condemns Mr. McDermott in language substantially identical with that employed in the cases which have been cited; but inconsistently it does not provide for his expulsion. If his conduct merits such strong condemnation, is it logical to say that he is fit to continue to occupy his seat in this House? The precedents of the Senate and of the House show that whenever Members have been guilty of conduct of which Mr. McDermott has been convicted by the committee, a majority always voted in favor of expulsion.

SECTIONS OF THE CRIMINAL CODE WHICH M'DERMOTT VIOLATED IN SPIRIT AND PERHAPS IN LETTER.

The statute relating to bribery.—Section 110 of the Criminal Code:

Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place, and thereafter be forever disqualified from holding any office of honor, trust, or profit under the Government of the United States.

Attention is called to the fact that under this section of the Criminal Code it is just as much an offense to "ask" for as to "receive" a bribe. Nor need the bribe be in the form of money. Asking for or receiving "any valuable consideration" constitutes the offense. And it is equally an offense, whether the "valuable consideration" is sought or received for past "services," or with intent to influence a future vote.

The statute relating to extortion.—Section 85 of the Criminal Code:

Every officer, clerk, agent, or employee of the United States, and every person representing himself to be or assuming to act as such officer, clerk, agent, or employee, who, under color of his office, clerkship, agency, or employment, or under color of his pretended or assumed office, clerkship, agency, or employment, is guilty of extortion, and every person who shall attempt any act which if performed would make him guilty of extortion, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

That a Member of Congress is an "officer of the United States" was held by the select committee in the Roberts case (Hinds' Precedents, vol. 1, No. 478). Attention is directed, also, to the fact that this section makes an attempt at extortion equally criminal with successful extortion. As to what constitutes extortion, the definition given by Bouvier (Law Dictionary I, p. 636) is cited:

The unlawful taking by an officer, by color of his office, of money or thing of value that is not due to him, or more than is due him, or before it is due.

The statute prohibiting contributions by corporations for campaign purposes.—Section 83 of the Criminal Code, law of January 27, 1907:

It shall be unlawful for any national bank or any corporation organized by authority of any law of Congress to make a money contribution in connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which presidential and vice presidential electors or a Representative in Congress is to be voted for, or any election by any State legislature of a United States Senator. Every corporation which shall make any contribution in violation of the foregoing provisions shall be fined not more than five thousand dollars; and every officer or director of any corporation who shall consent to any

contribution from the corporation, in violation of the foregoing provisions, shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

In connection with this statute, attention is directed to section 332 of the Criminal Code, reading as follows:

Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal.

This section makes it clear that a candidate for a seat in Congress who solicits or receives contributions to his campaign fund from corporations is as guilty of a violation of the law as are the corporations which make contributions.

TESTIMONY RELATING TO THE MISCONDUCT OF REPRESENTATIVE M'DERMOTT AS BROUGHT OUT IN THE HEARINGS BEFORE THE SELECT COMMITTEE.[1]

The select committee appointed under House resolution 198 did not primarily inquire into the fitness of Representative McDermott to continue to hold his seat in this House. Its inquiry was directed mainly to determining whether the National Association of Manufacturers had corruptly influenced legislation. Yet in the 3,000 pages of testimony taken by the select committee there is abundant evidence showing how utterly inconsistent Representative McDermott's conduct has been with public trust and duty. And this is the only question properly before this House. We are not sitting as a jury to try Mr. McDermott upon the charge of crime. If the House were a jury to try Mr. McDermott for crime, the writer and other Members would be willing to meet the issue that Mr. McDermott has been guilty of a violation of the statute relating to bribery and of that prohibiting contributions for campaign purposes by corporations. But under the precedents of the House the issue is not whether Mr. McDermott be shown beyond a reasonable doubt to have been guilty of crime, but whether his conduct has been inconsistent with his high trust. When this issue is met squarely there can be no question that Mr. McDermott is morally so wholly unfit and unworthy that he should forthwith be expelled from his seat in the House.

MR. M'DERMOTT'S ALLEGED LOAN FROM THE FEDERATION OF LIQUOR DEALERS OF THE DISTRICT OF COLUMBIA.

In September, 1912, Mr. McDermott came to Washington to borrow $500 from the pawnbroker, George Horning. Failing to get the money from Horning, Mr. McDermott did borrow $500 from the Federation of Liquor Dealers of the District of Columbia (p. 1186). This loan was negotiated through George Harvey, secretary of the Federation of Liquor Dealers of the District of Columbia. Harvey consulted four other officers of the executive committee of this federation, who approved the loan. This $500 loan was made to Mr. McDermott in cash upon an unsecured note bearing 6 per cent interest, payable in three months. This note had not been paid by August,

[1] All references, unless otherwise indicated, are to the published hearings before the select committee.

1913 (11 months after this transaction), and no serious effort had been made by the Federation of Liquor Dealers to collect the same.

At the time when Mr. McDermott made this $500 loan from the Federation of Liquor Dealers this organization had in its treasury a large special fund created to defeat the Jones-Works bill pending before Congress (Report of select committee, p. 11). Whether the $500 loan to Mr. McDermott came out of this special fund does not clearly appear, but no claim was made by any witness that it did not, and certainly it came out of the treasury of the Federation of Liquor Dealers.

As to this loan, Harvey, the man through him it was negotiated, testified (p. 1186):

> It was entirely against my grain, and against what I had thought should ever be done, but in this case he seemed desperate.

Harvey further testified that the other four members of the executive committee of the Federation of Liquor Dealers who approved the loan did not "like the idea" (p. 1196). The Federation of Liquor Dealers never made any loan to any other Member of Congress, or, in fact, to anybody else (p. 1191). In spite of the unusual character of this loan, neither Harvey nor the four members of the executive committee of the Federation of Liquor Dealers who approved the loan asked Mr. McDermott any questions as to why he had to come all the way from Chicago to raise this loan, and why he could not get the money among his own people in Chicago (pp. 1194, 1196).

The reason why this loan was made to Mr. McDermott under these unusual circumstances appears pretty clearly from the following extract from the hearings before the select committee (p. 1193):

> Mr. RUSSELL. You would not have loaned $500 to him if you understand he was unfriendly to you, would you?
>
> Mr. HARVEY. That would not be a natural transaction; but I do not know what have been done under the circumstances with a man as distressed as he appeared to be.

When this transaction of Mr. McDermott with the Federation of Liquor Dealers of the District of Columbia is viewed in the light of common sense, there is no escaping from the conclusion that Mr. McDermott did get a large financial favor from the liquor dealers while they were vitally interested in pending legislation. He did, in fact, vote for the less drastic substitute of the District Committee for the Jones-Works bill. But whether this financial favor was extended to Mr. McDermott to influence his vote upon the Jones-Works bill, or because his previous record showed that he invariably voted with the liquor interests, is immaterial. Whether a Member of Congress receives payment for past services, or payment for a future vote, he is equally unfit for his high position. And in this case it is difficult to see how Mr. McDermott can escape from the statute relating to bribery on the one hand and from the statute relating to extortion on the other. But irrespective of whether a jury would convict or acquit Mr. McDermott of these crimes, under our oath of office can we say that he is morally fit to continue to occupy his seat in Congress?

MR. M'DERMOTT'S RELATIONS WITH THE PAWNBROKERS.

While there is much that is disputed in all of the transactions of Mr. McDermott with the pawnbrokers and loan sharks, when the

cumulative testimony is considered, the weight of the evidence is conclusive, that he did receive money and credit, at least in part, by virtue of his being a Member of Congress. While soliciting money and credit he had full knowledge that pawnbrokers were vitally interested in legislation pending before Congress and that they had raised a large fund in relation thereto.

The special committee found (report, p. 12) that in the spring of 1911 the pawnbroker and not broker, George A. Horning, did raise a fund of at least $8,000 from the note brokers of the District of Columbia to defeat the Dyer loan-shark bill. Somewhat later the three pawnbrokers, Horning, Heidenheimer, and Burnstine, raised another fund of $3,700 in reference to this bill. (Report, p. 13.) Horning kept no books as to either of these lobby funds.

McMichael testified that Mr. McDermott on several occasions, after the loan-shark bill had become law, told him that he had gotten $7,500 out of the fund the loan sharks had raised (p. 492).

Aside from this testimony, there is ample evidence that Mr. McDermott did get money and credit from the pawnbrokers who had raised the lobby fund, under circumstances that strongly suggest that he solicited and received the money because he was a Member of Congress. It is admitted that Mr. McDermott borrowed large sums of money at various times from George Horning, the man who raised both lobby funds. Horning testified (p. 765) that the total of these loans to Mr. McDermott was $1,085. But while he was positive that the total was exactly $1,085, he could give definite information about only one of the sums constituting this total—an item of $85 (p. 912). All of these loans to Mr. McDermott by Horning were made without his giving any note therefor and without interest. Horning nowhere made any memorandum about these loans. The major portion of these loans, Mr. McDermott testified (p. 1594), were made when he was interested in the aeroplane venture; in other words, in the summer of 1911, when Horning was raising and expending the big lobby funds referred to. Horning and Mr. McDermott claimed that these loans were entirely personal, and had no relation to the lobby funds. But as to the reliability of Horning's testimony, the characterization of all the pawnbroker witnesses by the special committee must be borne in mind:

> All of these were reluctant and unwilling witnesses. It was with great difficulty that they could be brought to relate the most simple facts, and their manner and appearance while testifying were such as to create a distinctly unpleasant and unfavorable impression upon the committee. (Report, p. 12.)

Mr. McDermott undoubtedly knew from Horning that the loan sharks had raised a large fund. McMichael testified that Mr. McDermott constantly referred to this fund. Aside from this, it is undisputed that Horning frequently spoke to Mr. McDermott about the loan-shark bill, and was frequently in Horning's company. Mr. McDermott's own testimony shows that most of the loans of Horning to Mr. McDermott were made just after the lobby funds had been raised. Under these circumstances it seems probable that Mr. McDermott made these extraordinary demands for money upon Horning at this time, knowing that Horning had a large lobby fund to expend. The fact that no memorandum was kept about these loans strengthens the view that, if Mr. McDermott did not get these loans out of the

lobby funds, he solicited these loans because he knew Horning had raised these lobby funds.

McMichael testified that aside from these admitted loans by Horning to Mr. McDermott, Horning gave financial favors to McMichael because of the solicitation of Mr. McDermott. He testified (pp. 490, 644) that on one occasion after the introduction of the loan-shark bill he secured a loan of $50 from Horning to meet a request from Mr. McDermott to send him $125. To secure this $50 loan McMichael pawned his jewelry. When Mr. McDermott returned to Washington he gave McMichael a note to Horning reading, "Geo., give Mc his jewelry." Horning did give McMichael his jewelry, and made him sign a receipt to the effect: "Received from George Horning $50, for service rendered." Horning and Mr. McDermott, naturally, do not admit the correctness of this testimony by McMichael. But in several respects Horning corroborates McMichael. He testified (p. 816) that he remembers that he did loan $50 to McMichael upon a note for which he deposited his jewelry after McMichael had shown him a telegram or letter from Mr. McDermott to the effect that McMichael should raise $125 for Mr. McDermott. But Horning could not remember anything about this note being ever paid or whether the jewelry was ever gotten out of pawn. McMichael exhibited the jewelry to the special committee, and Horning never produced the $50 note, which he must still have held if it was not redeemed. Horning, moreover, admitted that on one occasion he made McMichael give him a receipt for $50 paid him "for service rendered." He claimed that this $50 was paid to McMichael for a trip to New York in the interests of the pawnbrokers; but he could not explain what McMichael did in New York for the pawnbrokers (p. 814), nor could he definitely remember whether the $50 paid to McMichael was paid in cash or through cancellation of a note (p. 817). In view of Horning's hazy recollections upon this transaction, the weight of evidence is in favor of the McMichael version of the story.

Mr. McDermott also received financial favors from Heidenheimer while the loan-shark bill was pending. According to Heidenheimer's testimony, he did not meet Mr. McDermott until introduced to him by Horning when the loan-shark bill was pending (p. 667). He met him thereafter only on a very few occasions. Mr. McDermott never had any regular business transactions with Heidenheimer (p. 666). Yet it is admitted by both Heidenheimer and by Mr. McDermott that on several occasions Heidenheimer cashed Mr. McDermott's clerk-hire checks in the middle of the month, before they were due, without charging any interest for holding them two weeks or more (pp. 673, 1619). According to Mr. McDermott's own testimony, this happened at least four or five times (p. 1635). On one occasion Mr. McDermott in person came to Heidenheimer's place of business to cash the clerk-hire check in advance of the time when it was due (p. 673). Heidenheimer never cashed a check for any other Member of Congress, much less two weeks in advance of the time when it could be redeemed (p. 674). It is not in evidence that Mr. McDermott cashed his clerk-hire checks in advance of the time when they were due anywhere except with Heidenheimer, a pawnbroker, whose regular interest charge was 3 per cent per month and above. It is evident that this

accommodation and financial favor to Mr. McDermott was extended to him because he was a Member of Congress, and at the time when the loan-shark bill was pending, to defeat which Heidenheimer had made a large contribution to the lobby fund.

There is also a proven transaction occurring while the loan-shark bill was pending, in which Heidenheimer allowed McMichael to recover jewelry pawned as security for a note without paying the interest due thereon, amounting to $14 to $18. McMichael testified (p. 492) that this favor was extended to him by Heidenheimer after Mr. McDermott had in person gone to Heidenheimer's place of business and had asked that the debt be canceled. Heidenheimer refused to do this, but let the interest go. Heidenheimer admitted that he let McMichael have his jewelry without paying any interest, but could not remember whether McMichael or Mr. McDermott asked him for this favor (p. 666). In view of the fact that Mr. McDermott appears to have been in Heidenheimer's place of business only on one other occasion, it is pretty clear that it must have been Mr. McDermott who asked Heidenheimer to let McMichael have his jewelry without paying any interest on his note. Heidenheimer testified that he let the interest go, because McMichael was a good customer (p. 667). If this was true, it is difficult to understand why McDermott, and not McMichael, made the call upon Heidenheimer to get the interest remitted. It is quite clear that in this transaction McDermott got a financial favor for a friend from a pawnbroker he didn't know very well because he was a Member of Congress and had a vote upon the loan-shark bill, in which the pawnbroker was most vitally interested.

It is a matter of record that when the loan-shark bill did come up in the House Mr. McDermott voted for the substitutes which the pawnbrokers were favoring. The only other service which he appears to have rendered to the pawnbrokers was in connection with a trip to New York in April, 1911. It is undisputed that on that occasion Horning, Congressman McDermott, and McMichael all happened to be together at the same time in the New York office of John A. McDermott, of the United States Brewers' Association. Horning and John A. McDermott admit that on that occasion the former asked the latter for letters of introduction to Tammany politicians and for his help upon the loan-shark bill (pp. 767, 1644). Except Congressman McDermott, none of the witnesses denied that Congressman McDermott was present when Horning solicited the aid of John A. McDermott to secure support from Tammany for the pawnbrokers. As to how it happened that Congressman McDermott, Horning, and McMichael all were together at that time in the office of John A. McDermott there is somewhat contradictory testimony. Horning testified that he met Congressman McDermott and McMichael before this and asked them to go with him to the office of John A. McDermott (p. 761). Horning was not even positive that the three had not gone together to New York from Washington or that this was not the occasion when he allowed McMichael $50 for making a trip to New York in the interests of the loan sharks (p. 814). John A. McDermott thought that on this occasion Horning arrived at his office in advance of the others. He had some recollection, however, that Horning told him

when he arrived that Congressman McDermott would be along later, as appears from the following extract from the hearings before the special committee (p. 1761):

Mr. RUSSELL. You say that when Mr. Horning came into your office he said he thought that Jim McDermott would be there?

Mr. MCDERMOTT. When I asked him about Jim it seems to me he did say that, but I could not swear about that. The fact of the matter was that I paid little attention to the whole thing.

In view of this testimony by Horning and John A. McDermott it must be taken as established that the presence of Congressman McDermott in the office of John A. McDermott when Horning asked John A. McDermott to aid him in securing Tammany help for the loan sharks was not accidental, but prearranged between Horning and Congressman McDermott. If this was a prearranged meeting, this affair assumes the appearance of being one of the services rendered by Congressman McDermott to the pawnbrokers for which he was receiving the financial favors which have been set forth in this statement.

MR. M'DERMOTT'S TRANSACTIONS WITH THE UNITED STATES BREWERS' ASSOCIATION.

Mulhall testified (p. 1130) that Congressman McDermott, John A. McDermott, of the United States Brewers' Association, Fleming, brother-in-law of Congressman McDermott, and McMichael all told him that in 1909 Congressman McDermott was promised $5,000 by the United States Brewers' Association for his vote in support of Cannon in the rules fight of that year. He further testified that Congressman McDermott told him that he did, at Philadelphia, receive $2,000 of the $5,000 promised.

It is a matter of record that in the rules fight of 1909 McDermott was one of 23 Democrats voting with the Cannon Republicans. During that fight the brewers' lobby was active in support of Cannonism. While no definite conclusions can be drawn as to this testimony of Mulhall, support is given to its probable truthfulness by the proven contribution of John A. McDermott to Congressman McDermott's campaign fund in 1912. It is to be regretted that McMichael was not asked anything about this transaction in 1909.

Some time in March, 1912, Congressman McDermott, upon meeting John A. McDermott in Chicago, asked the latter for a campaign contribution to aid him in his primary fight. This is testified to by both McDermotts (pp. 1600, 1743). Congressman McDermott quotes John A. McDermott as having replied to this request, "We never give anybody any money" (p. 1600). The "we" referred to was the United States Brewers' Association. This testimony by Congressman McDermott makes it clear that he expected to get a campaign contribution from the United States Brewers' Association. Perhaps he looked upon it as another installment of the $5,000 promised in 1909. That Congressman McDermott was seeking a campaign contribution from the brewers' association for his primary campaign in 1912 is brought out, also, by the following extract from a

letter of McMichael to Mulhall, dated February 12, 1912 (given in full, p. 478):

> I have had a long talk with Mc., and from what I can understand we can get the money to go to Chicago from him, as he is going to New York and see McD. over there, and on his return we will be all right.

It is admitted by John A. McDermott, also, that Mulhall called upon him at his office in New York about the middle of March and asked for a contribution to Congressman McDermott's campaign fund by the United States Brewers' Association (p. 1747).

A $500 campaign contribution was actually made by John A. McDermott to the fund of Congressman McDermott on the day of the primary, April 8, 1912. This money was delivered in cash to Congressman McDermott by one Deitrich, an employee of the United States Brewers' Association living in Chicago. This contribution Congressman McDermott included in his sworn statement filed with the Clerk of the House after the primary, crediting it to John A. McDermott personally (p. 1342).

John A. McDermott insists that this was in fact a personal contribution (p. 1747). He was not related to Congressman McDermott and did not live in his district. He made no contribution to a campaign fund on any other occasion (p. 1751). The only reason assigned by Congressman McDermott for this contribution to his campaign fund by John A. McDermott was that they were close personal friends, their ancestors coming from the same county in Ireland.

John A. McDermott, however, admitted that he did probably talk over the $500 contribution to the campaign fund of Congressman McDermott after the primary—which took place on the day the contribution was made—with the other officers of the Brewers' Association. (1755.) It is difficult to understand why he should talk over this contribution with the other officers if he did not in fact charge it to the association. John A. McDermott further admitted that he collects his allowances for traveling expenses, amounting to $6,000 to $7.000 per year, and for incidental expenses, amounting to $200 to $300 per month, without rendering any itemized statement to the brewers' association (pp. 1752, 1754). The select committee, moreover, did not require the production of the books of the brewers' association; nor was Deitrich, the man who brought the contribution to Congressman McDermott, put upon the stand.

But regardless of whether or not the contribution credited to John A. McDermott was in fact made by the United States Brewers' Assosociation, the testimony of Congressman McDermott himself proves beyond the shadow of a doubt that he did prior to the primary campaign of 1912 ask John A. McDermott to arrange for a contribution by the brewers' association to his campaign fund. A statute passed by Congress while Congressman McDermott was a Member makes such contributions by corporations a misdemeanor. In soliciting funds from the brewers, who are constantly interested in legislation pending before Congress, Congressman McDermott, moreover, came dangerously near to violating the statute relating to bribery, if he did not in fact do so.

MR. M'DERMOTT'S ALLEGED LOANS FROM MULHALL.

In the account published in the New York World and in the Chicago Tribune, Mulhall stated that the loans he made to McDermott

totaled $1,500 to $2,000. In his testimony before the select committee Mulhall gave $800 to $900 as his estimate of the total of his loans to McDermott (p. 1362). According to Mulhall, Mr. McDermott borrowed money from him whenever they were together at Fritz Reuter's. On one occasion he gave Mr. McDermott $65 and followed it up with $35 on the next day (p. 1004). At another time, Mulhall testified, McDermott snatched $36 out of his hand while standing in front of the bar in the Fritz Reuter Hotel (p. 1005). McMichael testified that while he never saw any actual money passed from Mulhall to McDermott, he observed that while Mr. McDermott went into the Fritz Reuter place without money, he always came out with money (pp. 431, 432).

Upon the loans of Mr. McDermott from Mulhall the select committee found (Rept., p. 61):

> We think, too, that the weight of the testimony is that Mr. McDermott did obtain occasional sums of money from Mulhall in the way of small loans when they were together, but the testimony convinces us that these were personal acts of Mulhall, and we do not believe that he let McDermott have this money with a view of corrupting him.

The select committee found that Mr. McDermott made loans from Mulhall, and there is no proof, or even any claim, that any of these loans were ever repaid. What was the total of these loans is of little importance. Guilt or innocence does not depend upon the number of corrupt transactions.

Nor does it seem to me that the character of these loans is materially changed because they came mainly out of Mulhall's pocket and were not charged to the National Association of Manufacturers. McDermott knew that Mulhall was the lobbyist of the National Association of Manufacturers. None of the loans he made from Mulhall appear ever to have been repaid. To borrow money from a lobbyist and to fail to repay the sums borrowed is just as much proof of unfaithfulness to trust and duty as is the borrowing of money from a lobby fund.

It is clearly established, moreover, that Mulhall did at various times charge the national association with the expenses of entertaining Congressman McDermott. The following items appear in the expense accounts rendered by Mulhall to the National Association of Manufacturers, for which he was reimbursed by that association:

> December, 1910. Supper for self, I. H. McMichael, Congressman James A. McDermott, and others at Fritz Reuter Hotel, $8.
> May 11, 1911. Dinner for self and Congressman McDermott and friends at hotel, $4.
> May 25, 1911. For entertaining McDermott from 8 p. m. to 1 a. m., $6.

McMichael testified that Mr. McDermott regularly shared in the $50 salary per month McMichael was receiving from the National Manufacturers' Association (pp. 422, 423). He further testified that on several occasions Mr. McDermott asked Mulhall to increase the pay of McMichael, so that he could receive a larger share thereof (pp. 516, 517). The select committee found (Rept., p. 61) that it is probable that Mr. McDermott did at various times make loans from McMichael, knowing that the sums borrowed came from the $50 per month McMichael was receiving from the National Association of Manufacturers. It expressed its belief, however, that this was not a regular occurrence. This, however, is immaterial. The character of the act is not changed by the frequency of its occurrence.

MR. M'DERMOTT'S SOLICITATION OF FUNDS FROM MEMBERS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS FOR HIS AEROPLANE VENTURE.

In July, 1911, Mr. McDermott went to the office of J. P. Bird, general manager of the National Association of Manufacturers, in New York and presented the following letter of introduction from Mulhall (pp. 1120, 1473):

WASHINGTON, D. C., *July 17, 1911.*

Mr. J. P. BIRD,
General Manager National Association of Manufacturers.
30 Church Street, New York City.

MY DEAR BIRD: This letter will introduce you to one of the very best friends we have in Washington, Mr. James T. McDermott, a Member from the fourth congressional district in Illinois.

I know it is not necessary to call your attention to the many good things I have said in my letters concerning Mr. McDermott to you, for if it was not for the splendid assistance he has given us on many occasions we would have found ourselves traveling over a very rough road here in Washington.

Mr. McDermott is greatly interested in a patent which he wishes to call to your attention, and which I know he will fully explain to you when he hands you this letter. I will take it as the greatest favor which you can bestow if you will aid him in any way you can along that line.

So hoping to hear that you have had a very pleasant chat and interview with Mr. McDermott, believe me, as ever,

Faithfully, yours.

After presentation of this letter, Bird testified (p. 1473), McDermott asked Bird to extend to him $6,000 to $8,000 credit to buy engines for the aeroplane, which was being built at Bridgeport by a firm in which Mr. McDermott was interested.

It is Mr. McDermott's claim that he did not know the contents of this letter, as McMichael got it from Mulhall for him, and it was handed to him in a sealed envelope. Yet he admits (p. 1581) that he and McMichael had discussed the possibilities of raising $3,000 to $4,000 through a letter of introduction he was to get from Mulhall. He admits, moreover, that McMichael said, when he handed him the sealed envelope: "The Colonel recommended you most highly." Also, "I had a general idea" (of what the letter contained) "McMichael told me it was a good strong letter" (p. 1682). Mulhall testified that Mr. McDermott asked him for the letter of introduction to Bird, and told him to play up Mr. McDermott's services to the Manufacturers' Association as strongly as possible. Inasmuch as Mr. McDermott admits that he talked over with McMichael the possibilities of raising $3,000 to $4,000 through a letter of introduction from Mulhall, the weight of evidence is that Mr. McDermott did know that the letter he carried to Bird was a testimonial to his services to the Manufacturers' Association. Moreover, Bird is not entirely certain whether the letter Mr. McDermott carried was sealed or unsealed (p. 1473).

Further proof that Mr. McDermott was a party to a scheme to raise a large sum of money on the plea of his services as a Member of Congress to the Manufacturers' Association is furnished by the following telegram, received by Mulhall in Washington July 19, 1911, the day after Mr. McDermott saw Bird in New York (p. 1121):

Absolutely necessary you come to Bridgeport immediately. Get your Bridgeport addresses in New York from Mr. B. Try and leave to-night, if possible. Answer Stratfield.

JAMES T.

This telegram was sent from Bridgeport, Conn., to which place Mr. McDermott, accompanied by McMichael, had admittedly gone from New York. Mr. McDermott did not remember sending this telegram, but McMichael testified he was present when it was sent. It clearly meant that Mulhall should come to Bridgeport, Conn., to assist Mr. McDermott in raising funds for the aeroplane, and on his way up should stop in New York to get a list of the members of the National Association of Manufacturers in the neighborhood of Bridgeport from General Manager Bird. The plan was that the members of the National Association of Manufacturers should be canvassed for Mr. McDermott's aeroplane venture by the chief lobbyist of the association, Mulhall.

These transactions of Mr. McDermott with the National Association of Manufacturers were certainly inconsistent with trust and duty. Very probably they render him liable, also, to indictment under the statute relating to bribery. But even if he could not be shown beyond reasonable doubt to have solicited payment for his services to the Manufacturers' Association, there can be no question but that his conduct in this instance proves his utter unfitness for the high position he occupies.

MULHALL'S COLLECTING CAMPAIGN FUNDS FOR M'DERMOTT IN THE LATTER'S PRIMARY CAMPAIGN OF 1912.

McMichael and Mulhall testified before the select committee that during the winter of 1912 they met with Mr. McDermott in Room 29 of the Capitol (this is the Mulhall room) and discussed a plan of having Mulhall go to Chicago to raise $6,000 from the manufacturers of Mr. McDermott's district (p. 457).

Mulhall did actually arrive in Chicago on March 28, 1912. Prior to that date George Fleming, the brother-in-law and campaign manager of Mr. McDermott, testified no effort had been made by Mr. McDermott to raise any campaign funds from the manufacturers of his district (p. 1557). He testified, also, that in the campaign of 1910 Mr. McDermott did not receive any contributions from any manufacturer of his district except Tilden, of the packers, who did not contribute in 1912 (p. 1548).

Mulhall was in Chicago until April 8. (Report of select committee, p. 63.) During this time he admittedly canvassed, in company either of Mr. McDermott or of Fleming, various manufacturers of the district to raise funds for Mr. McDermott. Mulhall inserted in the hearings before the select committee two lists of the firms visited (pp. 1127, 1139). Mr. McDermott admitted that most of the names on these lists were in his handwriting (p. 1608). He stated that he prepared these lists from the telephone directory after Mulhall arrived in Chicago. Mulhall testified that these lists were prepared in the office of Job, attorney for the Employers' Association of Chicago, who furnished a list of the members of that association, from which Mr. McDermott copied the names of the manufacturers in his district. Mr. McDermott admitted that he was twice in the office of Job with Mulhall (p. 1609).

Mulhall gave a detailed account of his calls upon manufacturers in Mr. McDermott's district, and of the amounts they were induced to contribute. The amounts given by him account for each and every

made personally or by the corporations of which he was Chairman can not be stated. In any case, Mr. McDermott was guilty of violating the spirit of the law prohibiting campaign contributions by corporations. Shall we go on record as to the effect that a Member of Congress who proposes that corporations be arraigned for campaign contributions by a committee selected and who did in fact receive campaign contributions from the officers of corporations is fit to continue to occupy his seat in Congress?

[illegible]

Mr. McDermott clearly abused the franking privilege. McMichael testified that George Fleming, the brother-in-law of McDermott, repeatedly used Mr. McDermott's frank upon letters written to him (p. 48). The select committee found (Rept., p. 6) that Michael sent Mr. McDermott's frank in mailing copy books and documents to the officials of the National Association of Manufacturers.

Mr. McDermott used only a small part of his desk-law allowance for the purchase of his services in Washington. At least four of the times Mr. McDermott voided his desk-law checks at Dodsworth's in the middle of the month before being due (p. 1697). Yet Mr. McDermott claims that he paid his brother-in-law, George Fleming, $100 per month out of his desk-law allowance for services in Chicago. If this payment was made, it was actually for something besides clerical services. A Member of Congress who is so hard pressed for money that he repeatedly voided his desk-law checks to advance with a particular [illegible] can not [illegible] to [illegible] pay in Chicago while he at the same time pays his secretary in Washington only $60 or $80 per month.

Mr. McDermott used the time of McMichael in his private service while the latter was supposed to be on duty as an employee of the House. Mr. McDermott called McMichael away from his post of duty so much that the latter was dismissed from his position as the press gallery (p. 49).

Mr. McDermott turned room 39 in the Capitol over to Michael, the lobbyist of the National Association of Manufacturers. The room had been assigned to the Sixty-second Congress to the Committee on Expenditures in the Department of Commerce and Labor. Mr. McDermott secured permission from Chairman Richmond to use this room (p. 1791). Subsequently he got three keys to the room made by the locksmith. Mr. McDermott denied that he ever had any keys made (p. 1758); but Chief Clerk Smith testified that Mr. McDermott not only had the keys made but had requested them several times before, but had been refused until Chairman Richmond said that Mr. McDermott might use the room (p. 1791). One of these keys was turned over to Michael. It was in this room, McMichael said Michael testified (pp. 421, 422, 423, 1803), that the secret conferences between Mr. McDermott and Michael were held. For about three months in the summer of 1913, while Congress was in session, Michael daily dictated in this room to a stenographer the correspondence relating to his work for the National Association of Manufacturers. (Testimony of Mrs. Klein, the stenographer, pp. 1765-1796.)

The select committee found (Rept., p. 60) that Mr. McDermott "knew of the employment of McMichael by Mulhall, and that he understood what Mulhall was engaged in; that is, that he was a lobbyist for the N. A. M." It thus convicts him of having guilty knowledge that an employee of the House was in the pay of a notorious lobbyist, dangerously near another violation of law. It found, moreover (Rept., p. 61), that Mr. McDermott did at times make loans from McMichael, knowing that the latter had received the money from Mulhall. To term this, as did the select committee, "an act of impropriety" is certainly putting it mildly.

Finally, there is the charge that Mr. McDermott, through McMichael, gave advance information to Mulhall as to the proposed offering of an eight-hour amendment to the sundry civil bill, in 1910, by Representatives Hughes. This charge was made by Mulhall and substantiated in all essential particulars by McMichael (pp. 417, 428).

VIEWS OF MR. FITZHENRY.

As a member of the Committee on the Judiciary I concur in the findings and conclusions contained in the majority report, except I dissent from the conclusion that the House of Representatives is without power to pass a resolution denouncing the conduct of the officers and agents of the National Manufacturers' Association, as shown by the record and report of the Select Lobby Investigating Committee.

There is a wide difference between the House of Representatives expressing its opinion concerning a line of conduct of individuals at previous Congresses and an attempt to punish individuals for contempt of the House of a former Congress by requiring a respondent to suffer punishment.

The majority report of the committee finds that the conduct of the officers and agents of the National Manufacturers' Association was reprehensible in the extreme, but for a lack of power declines to recommend the adoption of a resolution. Yet, in the same report, a Member of this House is found guilty of conduct unbecoming a Member of the House and the adoption of a resolution of censure of that Member is recommended.

It seems to me that if we have jurisdiction over the case of Mr. McDermott—and nobody seriously questions it—we must necessarily have sufficient jurisdiction over the entire subject matter to at least say that the House strongly disapproves of the conduct of the National Manufacturers' Association's officers and agents, which to a large degree is the basis of the charge that Mr. McDermott is guilty of conduct unbecoming a Member of the House.

The subcommittee of the Committee on the Judiciary to which this matter was referred made a very thorough investigation of the entire record in the case, and in its report to the full committee said:

> Your subcommittee have carefully considered the testimony, report, and findings of the select committee in regard to the lobby activities and operations of the National Association of Manufacturers. The record discloses that this association, through its duly constituted agent, M. M. Mulhall, secretly employed and placed on the pay roll of the association I. H. McMichael, chief page of the House, and paid him a stipulated salary of $30 per month, which contemptible transaction was sanctioned by the chief officers of said association. The testimony shows that at the beginning of a new Congress the officers of this association attempted, by surreptitious means, to control the organization and the personnel of certain committees of the House and the subcommittees thereof in the interest of their association, and in some instances their agent, Mulhall, boasted that they had done so. The testimony shows that they took an active and vigorous part in congressional campaigns, taking a lively interest in the reelection of Members who had favored them, and resorted to questionable and disreputable means to bring about the defeat of Members who had not approved their policies. The testimony shows that large sums of money were expended in these congressional campaigns and that they extended their cam-

paign activities into various districts throughout the country. Their methods were secretive, reprehensible, and disreputable, and deserve the severest condemnation by this House.

We therefore submit the following resolution and recommend its adoption:

"*Resolved*, That the House strongly condemns the conduct of the officers and agents of the National Association of Manufacturers, namely, J. Philip Byrd, John Kirby, jr., James A. Emory, and M. M. Mulhall, in carrying on improper and reprehensible lobby activities and in engaging in systematic secret and disreputable practices against the honor, dignity, and integrity of the House of Representatives, as disclosed in the testimony taken by and in the report and findings of the select committee appointed under House resolution 198."

The subcommittee's views upon this branch of the case are sound, in my judgment, and I feel that the House should adopt the resolution proposed.

If it be true that the House of Representatives is without precedent for this action, one should be created for the guidance of future Congresses in similar situations.

LOUIS FITZHENRY.

VIEWS OF MR. McCOY ON THE GARRETT RESOLUTION OF DECEMBER 9, 1913.

Mr. MacDonald, of Michigan, a member of the select committee appointed under House resolution 198, when he appeared before the Judiciary Committee, made a statement, in answer to Mr. Dyer, a member of the Judiciary Committee, as follows:

Mr. DYER. Is it your idea, as a member of the select committee which investigated these matters, that this committee is called upon under the resolutions which the House has referred to us, to determine and recommend to the House definite action?

Mr. MACDONALD. I should say no. I should say that they had imposed a great responsibility upon this committee, a responsibility where it naturally does not fall. If anyone were called upon to make recommendations in regard to exactly what should be done, my opinion is it was our committee, the select committee, and it seems rathe unconsciousable to me to ask another committee, after our committee went into the investigation, took months in hearing the witnesses, having an opportunity to see the witnesses on the stand, and to make up our minds more fully than another committee—it does not seem fair to me to ask another committee to assume the responsibility of action.

I agree entirely with Mr. MacDonald, and am of the opinion that the Judiciary Committee should do now what in my opinion it ought to have done promptly after this matter was referred to it; that is to say, I believe that the committee should refer back to the House the "findings and testimony" referred to it by the Garrett resolution, with a report stating the law as to the powers of the House in the premises and containing a recommendation that the matter be again referred to the select committee with instructions to report findings of fact upon which action should be taken and a recommendation as to what that action should be.

I fully appreciate that if the course of action above suggested should be followed, the Committee on the Judiciary would be criticized by some because its action was not different, and by others because it had delayed so long in making such a report to the House. It would undoubtedly be claimed that the committee had "dodged" the issue; but if the course of action suggested would have been right in the beginning, it can not be other than right now.

The Garrett resolution reads as follows:

Resolved, That the report of the select committee appointed under House resolution No. 198, and the findings and testimony, be referred to the Committee on the Judiciary, with directions to report to the House at the earliest practicable date what action, if any, should be taken by the House thereon.

It is uncertain what the House intended to have the committee do under this resolution. That is to say—

1. Whether the House wished the members of the committee to read all the testimony that had been taken before the select committee, and filling over 2,900 printed pages, in order to make up

their minds what the facts were, treating the so-called facts of the select committee as advisory; or,

2. To consider the findings of the select committee as final, provided there was testimony to support them; or,

3. To consider the so-called findings as final, so far as they go, and to read the testimony to ascertain whether other findings of fact should be made.

Entertaining the view in regard to the course which should be followed by the Committee on the Judiciary which I have expressed above, I have not followed any one of these three courses. I have not followed the first course for the reason that I did not see the witnesses who testified before the special committee and, therefore, should not have known what weight to give to the statements made by them. Every lawyer knows how essential it is to a proper consideration of testimony in the first instance, in order to reach a correct conclusion as to the facts, to see the witnesses. The select committee in reaching its conclusions of fact was influenced by such appearance, as is shown at page 12, where the majority of that committee say:

> All of these were reluctant and unwilling witnesses. It was with the greatest difficulty that they could be brought to relate the most simple facts, and their manner and appearance while testifying were such as to create a distinctly unpleasant and unfavorable impression upon the committee. After a number of hours of difficult examination, however, your committee finally elicited the following information:

And, again, on page 13:

> The evidence as to the amount raised by these three men to be used in connection with this legislation and the manner in which it was expended is by no means clear or satisfactory. There seemed a manifest desire to evade the inquiry in this regard, and it was with the greatest difficulty that your committee extracted sufficient testimony to obtain an intelligent impression.

Mr. MacDonald stated before the Committee on the Judiciary what his opinion was as to the necessity of seeing the witnesses in order to be able to reach a correct decision on the facts. What he said is found at page 22 of the Hearings before the Committee on the Judiciary and reads as follows:

> And it seems rather unconscionable to me to ask another committee, after our committee went into the investigation, took months in hearing the witnesses, having an opportunity to see the witnesses on the stand and to make up our minds more fully than another committee—it does not seem fair to me to ask another committee to assume the responsibility of action.

In my opinion no member of the Judiciary Committee is or can be in a position with fairness to those who are accused, to himself, or to the House of Representatives, to state to the House what are the ultimate facts upon which action should be taken or upon the basis of which the House might decide not to take action.

I did not adopt the second course, because if the select committee has made what may properly be termed findings of fact, then it is for the Members of the House themselves to determine after the matter has been argued on the floor of the House, whether or not there is evidence to support these findings.

The reasons for not following the first and second courses, both apply in the case of the third course above suggested.

That some of the members of the Committee on the Judiciary have followed one of the courses above outlined, some another, and

some still the third course, will, I believe, become apparent when the matter comes up for consideration in the House, and if such be the case the result will be confusion, and the matter is one of too serious import to run the risk of confusion. It is with the idea of having the matter come before the House in the shape in which it can be most intelligently acted upon that I have made and shall urge the adoption of the above suggestion.

I regret to have to disagree with a majority of the committee, and more especially so because of the fact that one of its members, namely, the chairman of the subcommittee to which the matter was referred, Mr. Floyd of Arkansas, has given to the consideration of the matter that conscientious and painstaking attention which characterizes all his work.

I agree with the majority of the committee in its view of the law expressed in the majority report.

I recommend the adoption of a resolution reading as follows:

Resolved, That the report of the select committee appointed under House resolution No. 195, and the findings and testimony, be referred back to the select committee with directions to report to the House at the earliest practicable date, findings of fact and a recommendation as to what action, if any, should be taken by the House thereon.

WALTER I. MCCOY.

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